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JOINT PUBLIC HEARING

before

SENATE ENVIRONMENTAL QUALITY COMMITTEE

AND

ASSEMBLY ENERGY AND ENVIRONMENT COMMITTEE

SENATE BILL NO. 2058 AND ASSEMBLY BILL NO. 2832

("New Jersey Hazard Elimination Through
Local Participation Act")

February 28, 1990
Labor Education Center
Rutgers, The State University
New Brunswick, New Jersey

MEMBERS OF SENATE COMMITTEE PRESENT:
Senator Richard Van Wagner, Co-Chairman
Senator Paul Contillo, Vice Chairman

MEMBERS OF ASSEMBLY COMMITTEE PRESENT:
Assemblyman Robert G. Smith, Co-Chairman
Assemblyman Neil M. Cohen, Vice Chairman
Assemblyman Thomas J. Duch
Assemblyman Arthur R. Albohn

ALSO PRESENT:

Mark T. Connelly
Patricia Cane
Office of Legislative Services
Aides, Senate Environmental Quality Committee

Spiros J. Caramalis
Raymond E. Cantor
Office of Legislative Services
Aides, Assembly Energy and Environment Committee

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Hearing Recorded and Transcribed by
Office of Legislative Services
Public Information Office
Hearing Unit
State House Annex
CN 068
Trenton, New Jersey 08625

New Jersey State Library

J O I N T P U B L I C H E A R I N G

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NOTICE OF A JOINT PUBLIC HEARING

The Assembly Energy and Environment Committee and the Senate Environmental Quality Committee will hold a joint public hearing to assess:

"NEW JERSEY HAZARD ELIMINATION THROUGH LOCAL PARTICIPATION ACT"
(A-2832/S-2058)

The hearing will be held on *Wednesday, February 28, 1990, beginning at 3:00 p.m. at the Labor Education Center, Rutgers University, Clifton and Ryders Lane, New Brunswick, New Jersey*

The public may address comments and questions to either Spiros Caramalis, Aide to the Assembly Energy and Environment Committee, or Patricia Cane, Aide to the Senate Environmental Quality Committee. Persons wishing to testify should contact Deborah Del Vecchio or Carol Hendryx, committee secretary, at (609) 292-7676.

Issued 2/7/90

(Directions: Take the N.J. Turnpike to Exit 9. Follow sign to New Brunswick and traffic interchange at junction of Routes #1 and #18. Follow U.S. #1 sign south towards Trenton. Proceed to exit marked New Brunswick/Ryders Lane; proceed on Ryders Lane to first intersection - Clifton Avenue. The Labor Education Center is on the right.) Note: If you have difficulty parking, use parking space at the adjoining shopping center. (Sears')

SENATE, No. 2058

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1990 SESSION

By Senators AMBROSIO, CODEY, CONTILLO, COSTA, FELDMAN, GRAVES, JACKMAN, LIPMAN, LYNCH, O'CONNOR, ORECHIO, STOCKMAN, VAN WAGNER, ZANE, BENNETT, DiFRANCESCO and DORSEY

AN ACT to encourage local participation in the prevention and remediation of toxic and other hazardous threats to human health and the environment, supplementing Title 13 of the Revised Statutes, amending P.L.1974, c.80, and making appropriations.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. (New section) This Act shall be known and may be cited as the "New Jersey Hazard Elimination Through Local Participation Act."

2. (New section) The Legislature finds and declares that every citizen is entitled to an environment free of hazards; that a crisis exists in this State as a result of hazards in the environment that emanate from the workplace; that this crisis continues to exist and increase in severity despite extensive efforts to overcome it; that too often this State has sought to prevent hazards by adopting regulations and imposing penalties that take effect after the hazard has been created; that new prevention strategies are needed to supplement existing law to overcome this crisis; that such prevention strategies should not rely solely on additional standard-setting or routine enforcement by governmental bodies; and that the New Jersey "Worker and Community Right to Know Act" and the "Toxic Catastrophe Prevention Act" provide important information bases for the development of prevention strategies.

The Legislature further finds and declares that to be effective, prevention strategies require the active involvement of persons directly involved with and affected by activities that generate environmental and public health hazards; that active participation by, and education of, the public will help overcome public distrust of suspected hazardous facilities operating nearby; that active participation by, and education of, employees will help increase productivity; that the training and education of citizens is a vital part of any effective prevention strategy; that employees at facilities that generate environmental and public health hazards have a public function to play in prevention strategies because of their immediate contact with the

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

hazard-generating activities and their knowledge of and involvement in the activities which generate hazards; that it is the legal responsibility of owners or operators of facilities under current state and federal law to furnish a safe and healthy workplace which is free from hazards that cause or are likely to cause death or serious physical harm to employees and community residents; that cooperation among owners and operators of facilities, employees, residents and State and local government is required for viable prevention of hazards; that committees composed of representatives of employers and employees can make a unique contribution to protecting the public health and environment from threats posed by hazardous and toxic substances; that effective prevention strategies require a unified approach for the elimination of occupational and environmental hazards; that hazards generated inside facilities routinely escape into the environment and affect the public health; that hazards effecting employees and community residents have enormous public health and economic impacts including increased injury and disease; and that the emotional and financial costs of these impacts are borne by the employee's family, neighbors and friends, decreased productivity and tax revenues, higher medical insurance costs and greater burdens on the health care and welfare systems.

The Legislature therefore determines that it is in the public interest to establish a system of local participation in preventing or abating hazardous and toxic threats to public health and the environment.

3. (New section) As used in this act:

"Commissioner" means the commissioner of the Department of Environmental Protection.

"Corporation" means any profit or non-profit corporation and includes each incorporator, corporate officer, member of the Board of Directors or Trustees or 10% shareholder, and any successor of any sort to the above.

"Costs of litigation" means any expense incurred as part of the litigation of a matter, including expert witness fees. Reasonable attorney's fees shall be determined by current market rates for similar services, making such adjustments as are required in the interests of having such lawsuits brought.

"Covered industry" means any person which has operations generally assigned or that otherwise meet the criteria of a Standard Industrial classification (SIC), as designated in the 1987 Standard Industrial Classification Manual prepared by the Federal Office of Management and Budget, within the following Major Group Numbers, Group Numbers, or Industry Numbers, as the case may be: 20-39 (manufacturing); 41 (local and interurban transit); 42 (trucking and warehousing); 481 (telephone communications); 49 (electric, gas, sanitary services); 516-517 (chemical and allied products, and petroleum and petroleum

products wholesalers); 5093 (scrap and waste dealers); 5198 (paints, varnishes, and supplies); 7011 (hotels); 7216 (dry cleaning plants); 805 (nursing and personal care facilities) 806 (hospitals); 807 (medical and dental labs) 8731 (commercial, physical, biological research); 8734 (testing laboratories); and any facility which is operated by a local government or by the state or any department, bureau, political subdivision, agency, authority, or instrumentality thereof, excluding local, county and regional school boards. The department, in consultation with the Department of Health and the Department of Labor, may add, by rule or regulation adopted pursuant to the "Administrative Procedure Act, P.L.1968, c.410 (C.52:14B-1 et seq.), facilities or worksites, or classes of facilities or worksites, based on the department's judgement that hazards may potentially exist at these facilities or worksites and that inclusion of said facilities would effectuate the purposes and policies of this act.

"Covered owner or operator" means any owner or operator of a facility employing 20 or more employees for 15 or more days per year in a covered industry.

"Department" means the Department of Environmental Protection.

"Emergency Planning Document" means any document that is directly relevant to the evaluation, development or revision of an Emergency Response Plan and may include, but need not be limited to, documents prepared pursuant to the "Toxic Catastrophe Prevention Act," P.L.1985, c.403 (C.13:1K-20 et seq.), the "Worker and Community Right to Know Act," P.L.1983, c.315 (C.34:5A-1 et al.), or the Federal Act.

"Emergency Response Plan" means a written plan designed to respond to an unusual release, which shall include, but need not be limited to, procedures for treatment for exposed persons in the community, a detailed plan of evacuation of persons at the facility and in the community and a detailed plan for reentry into the facility or community.

"Employee" means any individual who performs for compensation services for and under the control and direction of an owner or operator of a facility, except that "employee" shall not include elected officials, members of boards and commissions, managerial employees, confidential employees or independent contractors.

"Employee representative" means an organization engaged in a collective bargining or collective negotiating relationship with an owner or operator of a facility, which relationship is valid under relevant state or federal labor law.

"Expert" means a person with appropriate professional or technical education, training or experience.

"Facility" means all buildings, equipment, structures and other stationary items which are located on a single site or on contiguous or adjacent sites used for the conduct of business and

which are owned or operated by the same person, and are within a covered industry.

"Federal Act" means Title III of the "Superfund Amendments and Reauthorization Act of 1986," 42 U.S.C. 11001 et seq.

"Hazard" means any agent or condition or combination of agents and conditions that present an actual or potential adverse impact to human health, public safety or the environment.

"Hazard Analysis" means an analysis of current operations which evaluates conditions that may result in a unusual release.

"Hazard Prevention Advocate" means a person selected pursuant to section 26 of this act.

"Hazard Prevention Coordinator" means a person selected pursuant to section 26 of this act.

"Hazard Prevention Committee" means a committee established pursuant to Section 24 of this Act.

"Immediate Family" means a spouse, child, sibling, parent, grandparent, grandchild, uncle, aunt, niece, nephew, first or second cousin, whether so related by blood, marriage, or adoption, and whether formally legitimated or not.

"Imminent hazard" means a hazard that poses a material risk of: immediate or delayed onset of serious physical injury, including, but not limited to, an exposure to substances that are suspected to or known to have a carcinogenic, teratogenic or mutagenic effect in humans or animals; an unusual release; or property damage in excess of $5000.

"Local Emergency Planning Committee" means the committees established pursuant to the federal act and section 4 of this act.

"Owner or Operator" means, in addition to the usual meaning thereof, every owner of record of any interest in a facility, any operator of a faciility, and any person which owns a majority interest in any other corporation which is the owner or operator of a facility.

"Person" means an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, the State of New Jersey and any political subdivision thereof, except that "person" shall not include local, county and regional school boards.

"Qualified Community Organization" means an association qualified pursuant to sections 12 through 14 of this act.

"Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of any hazard into the environment.

"Successor" means any subsequent holder of any significant interest or control in a predecessor without regard to how the interest or control was obtained including but not limited to stock purchase, asset purchase, assignment, conveyance, bankruptcy, merger and quasi-merger.

"Trade secret" means a trade secret as defined and determined

pursuant to section 15 of P.L.1983, c.315 (C.34:5A-15).

"Unusual Release" means a release:

(1) For which notification of the National Response Center is required by the "Comprehensive Environmental Response, Compensation, and Liability Act of 1980"(42 USC 9601 et. seq.); or

(2) For which emergency notification is required by Section 304 of the Federal Act; or

(3) For which notification to the Department of Environmental Protection is required pursuant to P.L.1976, c.141, (C.58:10-23.11 et seq.); or

(4) Which requires the temporary evacuation of one or more persons from their homes or places of work outside the facility at which the unusual release originated; or

(5) Which causes property damage in excess of $5,000 outside the facility at which the unusual release originated ; or

(6) Which causes acute health effects resulting in death or hospitalization to a person outside the facility at which the unusual release originated, or death of a person at the facility.

"Unusual release" shall not include a release otherwise permitted by State or federal law.

4. (New section) a. The State Emergency Response Commission shall direct each county and municipality in the State to establish a local emergency planning committee. A local emergency planning committee shall be responsible for implementing the requirements of the Federal Act, and shall constitute the Local Emergency Planning Committees required by the Federal Act. A local emergency planning committee shall be chaired by the chief executive officer of the county or municipality, or his designee. The membership of a local emergency planning committee shall include an equal number of local government officials and representatives of the public. Two or more contiguous municipalities may, by adoption of an ordinance by the governing body of each municipality, agree upon the creation of a joint local emergency planning committee.

b. The governmental members of a local emergency planning committee shall be either the chief officer or deputy of the:

(1) Police Department
(2) Health Department
(3)Fire Department
(4) Roads, Traffic of Public Works Department
(5) Environmental Commission or Department
(6) Emergency Management Office
(7) Planning Board
(8) Right-to-Know "Coordinator"
(9) An elected official

c. The chief executive officer of the county or municipality shall appoint one representative from each of the following groups, where existing, to be public members of a local

emergency planning committee:

(1) owners or operators of facilities subject to Section 302 of the federal act;

(2) medical, industrial hygiene, environmental and safety professionals;

(3) environmental advocacy groups;

(4) labor organizations;

(5) community groups, or, if none exists, volunteers from the public;

(6) firefighter employee representatives or, if none exists, volunteer firefighters; and

(7) broadcast and print media.

d. The initial appointments to a local emergency planning committee shall be made within 180 days of the effective date of this Act.

e. If for any reason any of the positions on a local emergency planning committee become vacant, the chief executive officer of the municipality or county shall appoint within 60 days a replacement to represent the affected group.

f. Any resident of the county in which the municipality is located may, upon 20 days notice to the municipality, initiate a suit in the Superior Court by means of action in lieu of prerogative writ to compel its chief executive officer to initiate an appointment or fill a vacancy.

g. The Chairperson and each member of a local emergency planning committee shall be appointed for a term of two years. The Chair and members may be reappointed following completion of the individual's term.

h. The names, addresses and telephone numbers of the members of a local emergency planning committee shall be filed with the clerk of the county, municipality or municpalities constituting the local emergency planning committee. The clerk of the county or municipality shall annually notify the State Police of the names, addresses and telephone numbers, and capacity in which serving, of each member of the Local Emergency Planning Committee. The State Police shall maintain a ledger of the names, addresses, telephone numbers and capacities in which serving of the members of each local Eeergency planning committee. The public shall have the right, upon request, to review this ledger, and copies of the ledger shall be made available to the public upon request at a cost not to exceed the cost or copying or printing.

i. Upon written request, the clerk of the county or municipality shall furnish any person with the names, addresses, and telephone numbers of the members of the Local Emergency Planning Committee.

5. (New section) a. Meetings of a Local Emergency Planning Committee shall be held pursuant to P.L.1975, c.231 (C.10:4-6 et. seq.). A Local Emergency Planning Committee shall meet at

least once every three months, and more often as it deems appropriate.

b. At its first meeting, a Local Emergency Planning Committee shall designate separately a daily and weekly newspaper to which official notices and statements shall be transmitted. In counties or municipalities where the primary language of 10% of the residents is a language other than English, a Local Emergency Planning Committee at its first meeting shall designate a newspaper published in each language other than English to which official notices and statements shall be transmitted. A Local Emergency Planning Committee shall annually redesignate the official publications.

c. A local emergency planning committee, within 15 days of its first meeting and annually thereafter, shall transmit to the newspapers designated pursuant to subsection b of this section the name, business address, and business telephone number of each member, and the name, business and home address, and business and home telephone number of the chairperson.

6. (New section) a. Within 180 days of the effective date of this act, the department shall notify each Local Emergency Planning Committee of the name and address of every facility covered by the Federal Act.

b. Each owner or operator of a facility covered by the federal act shall prepare and annually update its emergency response plan in a timely manner.

c. Within 240 days of the effective date of this act, each owner or operator of a facility covered by the Federal Act shall submit to the Local Emergency Planning Committee its current emergency response plan and hazard analysis. The owner or operator of the facility shall promptly inform the Local Emergency Planning Committee of any relevant changes that will be occuring at the facility as such changes are expected to occur, and shall within 60 days of the changes submit a revised emergency response plan and hazard analysis to the Local Emergency Planning Committee.

d. Upon written request from a local emergency planning committee, an owner or operator of a facility shall provide within seven working days emergency planning documents and any additional information which the Local Emergency Planning Committee deems necessary for evaluating the emergency response plan.

e. A local emergency planning committee may at any time direct the owner or operator of a facility to revise or update its emergency response plan.

7. (New section) The New Jersey State Police Office of Emergency Management, in consultation with the department, may adopt, pursuant to the "Administrative Procedure Act," regulations prescribing the form, content and documentary support for an emergency response plan and hazard analysis and

specifying emergency planning documents for all facilities or a particular class of facilities.

8. (New section) a. At any time following the submission of the information required by section 6 of this act, a local emergency planning committee may determine to inspect a facility. The inspection shall be made by no more than six persons on a local emergency planning committee, composed of equal numbers of governmental and public representatives, who may be accompanied by additional non-member experts.

b. A local emergency planning committee shall be authorized to issue subpoena and to take any other action necessary to develop evidence necessary to support a warrant to inspect a facility. The Local Emergency Planning Committee may apply in its own name ex parte to the Superior Court for the issuance of a warrant to inspect a facility. A subpoena may be issued prior to any attempt to contact the owner or operator of the facility.

c. The inspecting members of a local emergency planning committee shall receive necessary instruction from the owner or operator of the facility on the proper use of any personal protective equipment that must be used during the inspection. The owner or operator of the facility shall provide the inspecting members of the Local Emergency Planning Committee with personal protective equipment needed to inspect the facility. Inspecting members of a local emergency planning committee shall comply with all safety rules and practices of the owner or operator of the facility including use of personal protective equipment.

d. A local emergency planning committee shall not be required to give the owner or operator of the facility prior notification of the inspection. If the owner or operator of the facility is to be notified by a local emergency planning committee prior to an inspection, written notice of the inspection shall be given to the appropriate hazard prevention coordinators the same time notice is given to the owner or operator of the facility. The hazard prevention coordinators may accompany the inspecting members of a local emergency planning committee on the inspection. During or after the inspection inspecting members of a local emergency planning committee, and their accompanying experts, may speak confidentially with any employee at the facility.

e. Any member of a local emergency planning committee functioning in that capacity may be denied access to a facility during a fire, unusual release, or similar emergency if, in the opinion of the highest ranking state or municipal police officer at the facility at the time of the emergency, the presence of the local emergency planning committee member would interfere with the suppression of the emergency, or would endanger the health or safety of the local emergency planning committee member.

9. (New section) a. The owner or operator of a facility shall

have the duty to cooperate fully with an inspection conducted pursuant to section 8 of this act. The Local Emergency Planning Committee shall not denied access to any area, production process, part or portion of the facility on the grounds that trade secret or proprietary information might be disclosed. Any person who knowingly discloses a trade secret gained on an inspection conducted by a local emergency planning committee to a competitor of the owner or operator of the facility or to anyone who would reasonably be expected to disclose the secret or information to a competitor shall, upon conviction, be guilty of a crime of the third degree.

b. The owner or operator of the facility shall not be liable for injuries occurring to inspecting members of the Local Emergency Planning Committee and accompanying experts during an inspection of a facility if:

(1) The injuries are due to simple negligence of the owner or operator of the facility; and

(2) The owner or operator of the facility clearly warned the injured party of the danger prior to the injury; and

(3) The owner or operator of the facility provided the necessary personal protective equipment and provided sufficient instruction for a layperson on how to use such equipment to enable a reasonable person to avoid the danger.

c. The inspecting members of the Local Emergency Planning Committee or their experts may use non-destructive means to document activities and conditions in the facility. The inspecting members of the Local Emergency Planning Committee or their experts may take air, water or soil samples, and conduct other forms of non-destructive environmental testing. The Local Emergency Planning Committee, in the course of monitoring or sampling, may take photographs and may leave and retrieve test equipment at the facility.

d. If the owner or operator of a facility receives notice from any agency of the State or federal government that it may be inspected, the owner or operator of the facility shall promptly notify the Local Emergency Planning Committee of the planned inspection. A governmental and a public member of a local emergency planning committee may accompany any such inspector.

10 (New section) a. The governing body of a municipality may adopt an ordinance to provide for personnel, administrative and all other reasonable costs to be incurred by a local emergency planning committee in the administration of this act, including but not limited to costs of record retention and public access to retained records.

b. All fees imposed pursuant to this section shall be paid by the owner or operator of a facility to the Local Emergency Planning Committee.

c. In the absence of an ordinance adopted pursuant to

subsection a of this section, a local emergency planning committee may direct the owner or operator of a facility to pay for the local emergency planning committee's costs in reviewing and evaluating the facility emergency response plan, which may include, but need not be limited to, the costs of retaining experts. The fee charged may include a surcharge not to exceed 10% of these costs to cover general administrative, record-keeping, overhead and other expenses of the Local Emergency Planning Committee not directly attributable to consideration of a particular Emergency Response Plan, unless an ordinance passed pursuant to subsection a of this section provides to the contrary.

11. (New section) A qualified community organization shall be authorized to inspect a facility, report on the results to interested parties and discuss means of eliminating hazards with the owner or operator of the facility and the hazard prevention advocates selected at the facility.

12. (New section) a. An organization may become a qualified community organization pursuant to the petition process set forth in this section and sections 13 and 14 of this act.

b. Each petition submitted for qualification shall designate the name and address of a specific facility to be inspected; and the name, addresses and telephone numbers of the Community Organization and the Community Organization's officer(s). Each petition shall be signed by the person who collected the signatures contained in it, and shall state that all signers of the petition revoke their name from all prior petitions for the same facility. All signatories shall live or work within the municipality in which the facility to be inspected is located or within five miles of the facility to be inspected, and shall at least 18 years of age. All signatures shall be accompanied by residential or work addresses and date of signing.

c. No individual may be an inspector or qualified community organization officer if the individual or any member of his immediate family:

(1) Is or within the previous year has been employed by, or served as a contractor to, the owner or operator of the facility.

(2) has or had within the previous year, any financial interest in the owner or operator of the facility, or has transacted more than $5000 in business with the owner or operator of the facility within the past year.

(2) Is employed by a competitor of the owner or operator of the facility.

d. No person collecting signatures shall receive any pay or remuneration of any kind for time spent in collecting signatures.

13. (New section) All petitions shall be submitted to the Department. Signatures and petitions submitted shall be presumed valid until declared invalid by the commissioner, and an organization's petitions shall be accepted upon presentation of 50

signatures. Upon receipt of the signed petitions, the department shall immediately forward copies of the newly filed petition to the hazard prevention coordinators, the owner or operator of facility and all other qualified community organizations for the facility. The department shall simultaneously transmit copies of all the currently effective petitions of all other qualified community organizations for the facility to the petitioning qualified community organization.

14. (New section) a. Within 30 days of its receipt of a petition from the department, a qualified community organization or an owner or operator of facility may challenge a petition by submitting to the department evidence of the invalidity of the petition, or of the signatures. For purposes of this section, evidence shall include, but shall not be limited to, certified statements, maps, petitions, and copies of signatures.

b. Upon receipt of the challenger's evidence, the department will conduct an investigation of those allegations supported by evidence, which investigation shall include, but shall not be limited to, providing the challenged qualified community organization with copies of the evidence and requesting a response and additional evidence from the challenged qualified community organization.

c. If the department finds probable cause to consider a petition to be invalid, it shall notify the challenged qualified community organization's officers and the owner or operator of the facility to have been inspected by the qualified community organization of the reasons for the department's finding, and that the qualified community organization's qualification will lapse if it does not, within ten 10 days of receipt of the notice, submit a new petition, or a sufficient number signatures to validate the previously filed petition.

d. If a qualified community organization does not submit to the Department in a timely manner a new valid petition, or sufficient valid signatures to validate the previously filed petition, then the Department shall notify the challenged Qualified Community Organizations that its qualifications has lapsed.

e. If the Department finds there is no probable cause to question the validity of a challenged Qualified Community Organization's petition, either as initially submitted, or as resubmitted or supplemented subsequent to a probable cause finding, then the Department shall notify the challenging and challenged Qualified Community Organizations that the qualification will continue.

f. The non-prevailing Qualified Community Organization, within ten days of receipt of a notice of lapsed qualification, or of continued qualification, may file a complaint with the Department, which shall refer the complaint to the Office of Administrative Law, before which the proceeding shall be

conducted as a contested case pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1, et seq.), and P.L.1978, c.67 (C.52:14B-1, et seq.).

g. Within 30 days of the receipt of the recommendations of the administrative law judge, the Commissioner shall adopt, reject or modify the recommendations. The decision of the Commissioner shall be considered the final agency action on the matter, and shall be subject only to review by a court of competent jurisdiction.

h. A qualified community organization established pursuant to this act shall be qualified to inspect a specific facility for a period of one year from the date of the initial petition submission. Following expiration of the qualification, the organization may requalify pursuant to section 12 of this act.

i. The Department shall maintain a file by facility of the names, addresses and telephone numbers of each Qualified Community Organization, and Qualified Community Organization officer. The information in the file shall be available to the public upon request.

15. (New section) a. Inspections by qualified community organizations shall be conducted by a team of not more than six inspectors and two experts. A qualified community organization desiring the inspection shall give reasonable notice to each other qualified community organization for the facility not less than ten days prior to the date of the proposed inspection, of a date, time and place for an inspection planning meeting. At or immediately following the inspection planning meeting, the initiating qualified community organization shall select the inspection team in such a way as to provide that each qualified community organization shall have, to the extent possible, an equal number of inspectors on the inspection team. The initiating qualified xommunity organization may designate at least one expert. If non-initiating Qualified Community Organizations suggest the name(s) of (an)other expert, the initiating Qualified Community Organization must designate at least one expert suggested by a non-initiating qualified community organization. The department, within one year of the effective date of this act, shall adopt, pursuant to the "Administrative Procedure Act," rules and regulations providing for the selection, composition and functioning of inspection teams.

b. Commencing nine months after the effective date of this act, periodic inspections may be conducted once during each calendar quarter by a qualified community organization inspection team. A qualified community organization may schedule a periodic inspection upon 15 days notice to the owner or operator of the facility. This notice shall be provided to the facility hazard prevention coordinators and the local emergency planning committee. On any inspection, one governmental and

one public member of the local emergency planning committee and the facility hazard prevention coordinators may accompany the inspection team.

16. (New section) a. The owner or operator of the facility shall notify all Qualified Community Organization(s) of an unusual release within three days of its occurrence.

b. Within 20 days of knowledge of an unusual release, a qualified community organization may schedule an emergency inspection by giving the owner or operator of the facility, the hazard prevention coordinators, and all other qualified community organizations at least three days notice. No more than one emergency inspection shall be conducted in response to one unusual release. For a six month period following one or more unusual releases, periodic inspections may be performed once each month.

c. Any member of a qualified community organization inspection team may de denied access to a facility during a fire, unusual release, or similar emergency, if, in the opinion of the highest ranking state or municipal police officer at the facility at the time of the emergency the presence of the inspection team member would interfere with the suppression of the emergency, or would endanger the health or safety of the inspection team member.

17. (New section) a. Within ten days of notice of a periodic inspection, the owner or operator of the facility shall provide the initiating qualified community organization with any requested document in the possession of the owner or operator of the facility concerning hazard prevention, response or analysis.

b. The inspection team shall receive necessary instruction from the owner or operator of the facility on the proper use of any personal protective equipment that must be used during the inspection prior to the date of the inspection. The owner or operator of the facility shall provide the inspection team with any personal protective equipment needed to inspect the facility. The inspection team shall comply with all safety rules and practices of the owner or operator of the facility including use of personal protective equipment. Members of the inspection team may, during the inspection or immediately afterward, speak confidentially with any person at the facility. The inspection team shall not be denied access to any area, production process, part or portion of the facility on the grounds that trade secret information might be disclosed.

c. Any person who knowingly discloses a trade secret gained on an inspection to a competitor of the owner or operator of the facility or to anyone who would reasonably be expected to disclose the secret or information to a competitor shall, upon conviction, be guilty of a crime of the third degree.

18. (New section) The owner or operator of the facility shall not be liable for injuries occurring to members of the inspection

team if:

a. the injuries are due to simple negligence of the owner or operator of the facility; and

b. the owner or operator of the facility warned the injured party of the danger prior to the party's encountering it; and

c. the owner or operator of the facility provided the necessary personal protective equipment to avoid the danger and provided sufficient instruction for a layperson on how to use such equipment.

19. (New section) The inspection team may use non-destructive means to document hazardous or potentially hazardous activities and conditions in the facility. The inspection team may take air, water or other samples, or do other forms of testing. The inspection team may, in the course of monitoring or sampling, leave and retrieve test equipment at the facility.

20. (New section) a. The department shall develop and provide to local emergency planning committee members, qualified community organization members, and hazardo prevention advocates educational materials which explain their rights and responsibilities established pursuant to this act, and which explain the enforcement mechanisms provided by existing federal and State law concerning hazard prevention and abatement.

b. The department shall establish a technical assistance grant program designed to make technical assistance grants available to assist qualified community organizations and hazard prevention committees in conducting inspections of facilities utilizing experts chosen by the qualified community organization or the hazard prevention committee. Costs eligible for reimbursement by a technical assistance grant shall include, but need not be limited to, travel and lodging expenses of experts, consulting fees, laboratory costs, and report preparation costs. A qualified community organization which is qualified for more than one facility may receive grants for each facility. No qualified community organization shall receive more than four grants per year.

c. To be eligible for a technical assistance grant a qualified community organization or hazard prevention committee shall submit information to the department pursuant to this subsection.

(1) At least 30 days prior to an inspection of a facility, a qualified community organization or hazard prevention committee shall submit to the department a notice of intent to seek reimbursement for inpection related expenses. This notice shall contain the name and address of any expert for whose expenses reimbursement is sought. If a qualified community organization or hazard prevention committee does not provide a timely notice of intent, it will be eligible for reimbursement for inspection related expenses only to the extent that funds are available, and will not be entitled to notice, prior to the inspection, of funds availability.

(2) Within 45 days following an inspection, a qualified community organization or hazard prevention committee shall submit to the department invoices or receipts documenting expenses for which reimbursement is sought.

(3) Within 45 days following an inspection, a qualified community organization or hazard prevention committee shall submit to the department the written inspection report required by this act and certification that this inspection report has been provided to the owner or operator of the facility, the local emergency planning committee and the hazard prevention committee.

d. A qualified community organization or hazard prevention committee which meets the eligibility criteria established in subsection c. of this section may receive a technical assistance grant of up to $3,000. per year per inspected facility from the department. The maximum amount of a technical asistance grant authorized pursuant to this subsection shall be annuallay adjusted by the department to account for changes in the consumer price index.

e. The department, within 10 days of receipt of a notice of intent to seek reimbursement for expenses, shall advise a qualified community organization or a hazard prevention committee in writing as to whether reimbursement funds are available.

f. Any expenses for which a qualified community organization or hazard prevention committee seeks reimbursement under this section shall be presumed qualified for reimbursement, unless the department specifically notifies the qualified community organization or hazard prevention committee to the contrary within 30 days of receipt of the invoices and expenses and inspection report. This period may be extended for up to 45 days upon the department's notification to the qualified community organization or hazard prevention committee, within 15 days of receipt of either the invoices and expenses or the inspection report, that additional information is required.

g. The department may adopt, pursuant to the "Administrative Procedure Act," any rules or regulations necessary to implement the provisions of this section. In adopting such regulations, the department shall provide that the maximum number of qualified community organizations and hazard prevention committeess are eligible to receive technical assistance grants.

21. (New section) a. Within 45 days following an inspection conducted pursuant to section 11 of this act, the initiating qualified community organization shall transmit a written report of the inspection team's findings and concerns regarding hazards at the facility to the owners or operators of the facility. The inspection team shall provide a copy of any report to the department, the local emergency planning committee, and the Hazard Prevention Coordinators, if any. The owner or operator

of the facility shall cause copies of any report to be available for inspection and copying by members of the public during regular business hours.

b. Within 45 days of the submission of the initial report, the owner or operator of the facility and the inspection team shall convene a meeting to discuss any additional activity which may be appropriate as a result of the inspection. The department, the local emergency planning committee and hazard prevention coordinators shall be notified of the time and place of the follow-up meeting, at which the department, a governmental and public member of the local emergency planning committee, and each hazard prevention coordinator may be present.

22. (New section) a. A qualified community organization and the owner or operator of a facility may enter into written agreements concerning release prevention arising from an inspection conducted pursuant to section 11 of this act. This written agreement shall be deemed a contract enforceable by the owner or operator of the facility or any person residing or working in the municipality in which the facility is located or within five miles of the facility, unless specifically and mutually agreed upon to the contrary. The department, any other qualified community organization, the local emergency planning committee, and the hazard prevention coordinators shall have the opportunity to comment in writing on a proposed agreement prior to the signing of the final agreement.

b. The owner or operator of the facility shall make available a copy of any agreement entered into pursuant top subsection a of this section to any person making a written request therefor.

c. Nothing in this section shall be deemed to limit any otherwise lawful agreement between an owner or operator of a facility and any other person.

23. (New section) The department and the local emergency planning committee shall notify the qualified community organization of their inspections of a facility conducted pursuant to any State or Federal law when the owner or operator of the facility is given advance notice of the inspection. The qualified community organization shall be authorized to have two representatives accompany the inspection.

24. (New section) Every covered owner or operator shall cause hazard prevention advocates to be selected at each of his facilities, except that an covered owner or operator which is a state appointing authority, a county, or a municipality with multiple facilities within a county, may submit to the department for approval an alternate plan providing for the selection of hazard prevention advocates selected from all or some of that employer's facilities within the county. Alternate plans shall allow hazard prevention advocates to exercise the authority granted pursuant to this act at any of their employer's facilities within the county. Alternate plans shall allow employee

representatives to select one designated representative at each facility with five or more employees. The proposed alternate plan shall be approved by all affected employee representatives.The plan shall be deemed accepted by the department unless the department within 30 days of receipt of the plan advises each state appointing authority, or county or municpality that it has rejected the plan. This period may be extended for up to 45 days, upon the department's request to the covered owner or operator for additional information. The department may adopt, pursuant to the "Administrative Procedure Act," regulations setting forth requirements for alternate plans.

25. (New section) At least two hazard prevention advocates shall be selected at each facility of a covered owner or operator. The number of hazard prevention advocates shall be determined by the number of employees in the facility, or, with respect to alternate plans, by the number of employees employed by the covered owner or operator, in accordance with the following formula:

20–35 employees–2 hazard prevention advocates
36–49 employees–4 hazard prevention advocates
50–99 employees–6 hazard prevention advocates
100–249 employees–8 hazard prevention advocates
250–375 employees–10 hazard prevention advocates
376–499 employees–12 hazard prevention advocates
500 and more employees–14 hazard prevention advocates

The number of hazard prevention advocates shall be revised annually or whenever the number of employees varies by more than 20%.

26. (New section) a. Hazard prevention advocates and hazard prevention coordinators shall be selected pursuant to this section.

b. At facilities where there is an employee representative representing employees, the employee representative shall designate one half of the hazard prevention advocates. A hazard prevention coordinator shall be selected by the employee representative from these hazard prevention advocates. At facilities where different employees are represented by different employee representatives, hazard prevention advocates shall be designated in proportion to the number of employees represented at the facility by an employee representative. The employee representative representing the greatest number of employees shall select the hazard prevention coordinator.

c. At facilities where there is no employee representative, employees shall select one half of the hazard prevention advocates through a secret ballot election conducted every two years by the covered owner or operator. All employees shall be eligible to vote and shall be given the opportunity to vote during their normal working hours at a location or locations at or contiguous to the facility for which the committee membership is being decided. Nominees receiving the most votes shall be

elected. The department, within nine months of the effective date of this act, shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et. seq.), rules and regulations setting forth nominating, balloting and vote challenging procedures for the selection of hazard prevention advocates at facilities where there is no employee representative.

d. At facilities where there is no employee representative, the employee hazard prevention advocates shall select from among themselves a hazard prevention coordinator.

e. A covered owner or operator shall designate one half of the hazard prevention advocates and one hazard prevention coordinator at every facility.

f. In the event of a vacant hazard prevention advocate position, a replacement shall be selected within 30 days, pursuant to the selection procedures set forth in this section, except that in facilities where there is no employee representative, the employee hazard prevention advocates shall select an employee to fill the vacant hazard prevention advocate position.

g. Hazard prevention advocates may be reappointed or re-elected. All hazard prevention advocates must be employed at the facility. Alternate hazard prevention advocates may be selected by the respective hazard prevention coordinators to substitute for hazard prevention advocates who are not available.

i. The powers of the hazard prevention coordinator may be exercised by an alternate or designee of the hazard prevention coordinator.

27. (New section) a. Every covered owner or operator shall prominently post and annually distribute to every employee at the facility the names and work locations of all hazard prevention advocates. Such notice shall be provided within 30 days after any election or selection of new hazard prevention advocates.

b. Within nine months after the effective date of this Act, the covered owner or operator shall notify the Department in writing of the name and residential address and telephone numbers of each hazard prevention advocate and alternate advocate, and shall within seven days notify the Department in writing of the names, residential addresses and telephone numbers of new hazard prevention advocates and and alternate advocates

c. Within seven days of receipt of a written request, the covered owner or operator shall notify any person of the names, residential address and residential phone numbers of each hazard prevention advocate and alternate hazard prevention advocate.

28. (New section) The hazard prevention advocates selected at each facility shall form a hazard prevention committee. A hazard prevention committee shall hold regular meetings at least once each month at a date, time, and location agreed to by the hazard prevention committee. Special hazard prevention committee meetings to discuss any imminent hazard shall, at the request of a hazard prevention coordinator, be held as soon as

practicable. The covered owner or operator shall prominently post in advance the date, time and location of each regular meeting of a hazard prevention committee.

29. (New section) a. The hazard prevention coordinators shall develop the agenda of all hazard prevention committee meetings. Every regular meeting shall include a review of the minutes of the previous regular meeting and all special meetings that have occurred after the previous regular meeting. Agendas shall be subject to approval by majority vote of the hazard prevention committee.

b. Either hazard prevention coordinator may invite members of the local emergency planning committees, experts on hazard identification and control, members of the qualified community organization and/or citizens expressing concern about releases from the facility to hazard prevention committee meetings. Each hazard prevention coordinator may invite no more than two non-employees to a hazard prevention committee meeting, except that a larger number of employees may be invited by mutual agreement of the hazard prevention coordinators.

c. Minutes shall be recorded of all hazard prevention committee meetings. The minutes shall at a minimum document attendance, identify any hazards or releases discussed, summarize decisions reached and any outstanding disagreements that prevent an agreement being reached. The covered owner or operator shall insure that meeting minutes are typed within seven days of the meeting. The minutes must be signed by both hazard prevention coordinators to indicate that the minutes are complete and accurate. The covered owner or operator may, with the written consent of both hazard prevention coordinators, redact any portion of the minutes that may disclose a trade secret, except if the person requesting is a governmental agency.

d. All activities of a hazard prevention committee shall take place at the facility during normal working hours unless provided otherwise in this act. The hazard prevention committee may by a two-thirds majority vote alter the place or time for the conduct of meetings or other activities authorized or required pursuant to this act.

e. Copies of hazard prevention committee meeting minutes shall be:

(1) Prominently posted for at least ten working days by the covered owner or operator within the facility within seven days of the date in which the meeting was held;

(2) Provided to all hazard prevention committee members within seven days of the date on which the meeting was held;

(3) Provided upon request to the department, the local emergecny planning committee, and each qualified community organization approved for that facility within 14 days of a request therefore.;

(4) Retained by the covered owner or operator ot its successor

for a period of 30 years;

30. (New section) a. The hazard prevention coordinators shall inspect part or all of the facility for hazards and surrounding areas affected or potentially affected by releases from the facility at least once each month. The hazard prevention coordinators shall cause a written report to be made of hazards and releases found on each inspection. The report shall be distributed to all hazard prevention advocates at least three days prior to the next regularly scheduled meeting of the hazard prevention committee. This report shall be attached to and considered a part of the next regularly scheduled hazard prevention committee meeting minutes. The hazard prevention committee shall determine every six months a schedule of areas it shall inspect.

b. The hazard prevention coordinators shall as soon as practicable investigate all accidents, near-misses, explosions, imminent hazards, unusual releases, or hazardous exposures. The coordinators shall cause to be made a written report of any such investigation. The report shall be provided to all hazard prevention advocates at least three days prior to the next regularly scheduled hazard prevention committee meeting. This report shall be attached to and considered a part of the next regularly scheduled hazard prevention committee meeting minutes. The covered owner or operator shall notify the hazard prevention coordinators immediately of any occurrences to be investigated pursuant to this subsection.

c. The hazard prevention coordinators shall be authorized to accompany all environmental, fire, safety, and health inspectors, qualified community organization and local emergency planning committee inspectors, and consultants retained by a covered owner or operator or an employee representative, on inspections and investigations of a facility. A covered owner or operator shall provide timely notification to the hazard prevention coordinators of the time of any inspection for which the covered owner or operator is given advance notice. In the event of an inspection conducted without advance notice, a covered owner or operator shall, immediately upon the arrival of the inspectors or consultants at the facility, notify the hazard prevention coordinators.

31. (New section) a. The hazard prevention coordinators shall receive from the covered owner or operator on a timely basis the facility Emergency Response Plan, Hazard Analysis and any revision thereof; any inspection reports from government agencies and from the Qualified Community Organization; and written complaints, alleged violations,suggestions, and inquiries from employees, government agencies, and members of the public concerning hazards at the facility. Either hazard prevention coordinator may request from a covered owner or operator any

emergency planning document, which the covered owner or operator shall provide within seven days. The covered owner or operator shall allow each hazard prevention coordinator reasonable opportunity to observe measuring, monitoring, or sampling for hazards.

b. A covered owner or operator shall inform the hazard prevention advocates of any industrial hygiene and environmental monitoring and medical surveillance protocols prior to their institution. The hazard prevention committee shall be authorized to review such protocols.

c. A covered owner or operator shall inform all hazard prevention advocates of all hazard indentification training programs. The hazard prevention committee shall have the authority to review and approve all hazard identification and prevention training programs consistent with existing law.

32. (New section) a. A covered owner or operator may, in writing, direct hazard prevention advocates to notify a supervisor when they take time to fulfill their functions under this act. Hazard prevention advocates should use reasonable care when scheduling time to perform their functions so as to minimize the impact upon business operations.

b. Every covered owner or operator shall allow each employee hazard prevention advocate to use a minimum of 16 hours each month, and, at facilities with 500 or more employees a minimum of 22 hours each month, during the employee's normal working hours to:

(1) write inspection reports or parts thereof;

(2) review copies of relevant reports, complaints, plans, and documents relating to the activities of hazard prevention advocates;

(3) research and write recommendations concerning the elimination and reduction of hazards;

(4) investigate complaints concerning hazards;

(5) discuss with public officials and others possible improvements in Emergency Response Plans;

(6) review, discuss, research and suggest revisions in the facility Hazard Analysis and other emergency planning documents so as to prevent unusual releases; and

(7) conduct all other business proper to the functioning of the hazard prevention advocates.

33. (New section) Hazard prevention advocates shall have access at all times to all parts of the facility to conduct their business. A covered owner or operator may designate a representative to whom as much advance notification as practicable of requests for access to the facility outside of regular working hours shall be given.

34. (New section) a. A covered owner or operator shall assure, at his expense, that all employee hazard prevention advocates annually receive hazard recognition and prevention and

unusual release training. This training shall be provided by experts, shall include information on releases and hazards pertinent to the facility as well as procedures and plans to prevent and minimize releases, and shall include an explanation of the provisions of this Act. Training for employees working in a facility covered by the Federal Act or P.L.1983, c.315 shall include an explanation of the provisions of these laws.

b. The department and the Department of Health, within one year of the effective date of this Act, and in consultation with the Department of Labor, shall jointly adopt, pursuant to the "Administrative Procedures Act," rules or regulations establishing minimum requirements for training and qualifications of experts to conduct this training. The department shall not adopt any rule or regulation concerning training which is covered by an existing standard adopted by the federal Occupational Safety and Health Administration.

c. The training provided pursuant to this section may cover relevant hazards and releases notwithstanding that one or more governmental agencies may have failed to issue standards or require training concerning the hazards or releases.

d. Hazard prevention advocates shall review and hazard prevention committees shall approve, the content, methods, and materials distributed to employees, the selection of trainers, and the scheduling of training under this section. A decision concerning approval or disapproval by the hazard prevention committee shall be reflected in hazard prevention committee meeting minutes.

35. (New section) a. The department, in consultation with the Department of Health, shall provide training by experts, updated as needed, to two hazard prvention advocates, at least one of whom shall be an employee hazard prevention advocate, concerning the recognition and prevention of unusual releases from facilities where unusual releases may occur. The covered owner or operator shall compensate the hazard prevention advocates at their regular rate of pay.

b. The department, within one year of the effective date of this act, shall adopt, pursuant to the "Administrative Procedure Act," any rules and regulations necessary to implement the provisions of this section.

36. (New section) a. Every covered owner or operator shall assure, at its expense, that all employees who are not hazard prevention advocates will receive annual instruction concerning hazards at the facility and release prevention. This instruction shall be provided by experts, who may be hazard prevention advocates, and shall include information on releases and imminent hazards as well as any facility procedures and plans to prevent and minimize releases, and shall include an explanation of the provisions of this Act. Training for employees employed at a facility covered by the Federal Act or P.L.1983, c.315 shall

include an explanation of the provisions of these laws which apply to the facility.

b. The instruction provided pursuant to this section may cover relevant hazards and releases notwithstanding that one or more governmental agencies have failed to issue standards or require training concerning the hazards or releases.

c. In workplaces where the primary language of either 10% of all employees or 25 employees is a language other than English, training shall be provided in that language in addition to English.

d. The content, methods, materials distributed to employees, the selection of trainers, and the scheduling of training under this section shall be reviewed by the hazard prevention advocates and approved by the hazard prevention committee. Decisions concerning approval or disapproval by the hazard prevention committee shall be reflected in hazard prevention committee meeting minutes.

e. The department and the Department of Health, within one year of the effective date of this Act, and in consultation with the Department of Labor, shall jointly adopt, pursuant to the "Administrative Procedure Act," rules and regulations establishing minimum requirements for training and for the qualifications of experts to conduct this training. The department shall not adopt any rule or regulation concerning training which is covered by an existing standard adopted by the federal Occupational Safety and Health Administration.

37. (New section) The hazard prevention committee shall have the opportunity to employ or contract with and utilize experts who have expertise in hazard prevention, evaluation, or training. These experts may accompany hazard prevention committee members on inspections of facilities. A copy of the report written by an expert must be provided by the hazard prevention committee to the covered owner or operator, the employee representatives, the qualified community organization and to the local emergency planning committee within seven days of its completion. A copy of the report shall be provided by the hazard prevention committee to an employee or to a member of an employee's immediate family, upon request within seven days. A hazard prevention committee may apply for a technical assistance grant pursuant to section 20 of this act.

38. (New section) a. The hazard prevention advocates shall be informed by the covered owner or operator prior to the engagement, transfer or termination of any personnel or outside contractors, whose job duties or organizational functions concern either hazard or release identification, reduction, or prevention at the facility, or health surveillance of, or provision of medical services to, employees of the employer. This subsection shall apply to the following job titles or organizational functions:

(1) industrial hygienists, safety engineers, environmental engineers or other personnel with responsibilities for evaluating,

minimizing or preventing hazards concerning the facility;

(2) physicians with responsibility for providing treatment, including but not limited to examining employees or reviewing employee medical records;

(3) medical clinics which employ doctors, nurses or other persons who evaluate injury or disease resulting from hazards.

b. Hazard prevention advocates shall be afforded the opportunity to participate and ask questions of applicants during employment interviews for the positions specified in subsection b of this section. The covered owner or operator shall provide to hazard prevention advocates the most current resume of any applicant, which shall include, but need not be limited to, the prior work history of any applicant for the positions specified in subsection a of this section at least ten days prior to an employment interview of that applicant.

c. This section shall not apply to persons retained by a covered owner or operator solely for the purpose of assisting it in litigation.

39. (New section) a. A covered owner or operator shall give written notice to each hazard prevention coordinator, and to each qualified community organization, prior to final decision and at least 60 days in advance of introduction, describing potential hazards or releases caused by the reasonably anticipated introduction or alteration of new machinery, equipment, processes or methods, and chemicals, the use, or discontinuance of the use of vendors and subcontractors, and the expansion or contraction of the facility. The written notice shall include an evaluation by the covered owner or operator of hazards anticipated to result from the covered owner or operator's decision; alternatives considered and reasons for utilization or rejection of the alternatives; and methods to be used to prevent or abate potential hazards, including but not limited to additional training . Either hazard prevention coordinator may call a special meeting to further discuss the contents of the notice.

b. A summary of the written notice required by this section shall be prominently posted within the facility for at least ten working days so that it is accessible to all employees, and an employee shall be promptly provided with the full report upon request. In workplaces where the primary language of either 10% of all employees or 25 employees is a language other than English, the covered owner or operator shall post a translation in that language of the summary required by this section and in the manner required by this section.

40. (New section) a. Any hazard prevention advocate or alternate who in good faith believes that any activity, machine, operation, process or release constitutes an imminent hazard may ask the covered owner or operator to promptly eliminate or abate the alleged imminent hazard.

b. If the covered owner or operator fails to promptly abate the

imminent hazard, and the hazard prevention advocate or alternate in good faith believes that there is insufficient time to eliminate the hazard through normal enforcement mechanisms, the hazard prevention advocate or alternate may direct the temporary cessation of the imminently hazardous operation, activity or process in question, and may further direct employees to cease and desist from the operation, activity or process involving the claimed imminent hazard. No hazard prevention advocate or alternate may exercise the right provided by this subsection if doing so creates a more severe imminent hazard.

c. After directing the cessation of an alleged imminently hazardous operation, activity, process or release, a hazard prevention advocate or alternate shall promptly telephone or otherwise advise the nearest office of, as appropriate, the United States Occupational Safety and Health Administration or the United States Environmental Protection Agency, or one of the New Jersey Departments of Labor, Health, Community Affairs, or Environmental Protection, to request an immediate inspection of the claimed imminent hazard.

d. A covered owner or operator shall not permit the operation, activity or process in question to be restarted until the arrival of a governmental agency representative to observe the specific operation, activity, process or release in question. The covered owner or operator may resume or restart the operation, activity, process or release in question if failure to do so would actually pose an immediate, direct and highly substantial threat to human life, or if the hazard prevention advocate or alternate agrees that the imminent hazard has been abated.

e. A covered owner or operator may require any employee who had been working on or near a temporarily ceased operation, activity, process or release to remain at the facility for the remainder of his normal work shift. The employee may be temporarily assigned to other duties with no loss of pay or benefits.

f. Unless prohibited by a governmental inspector, a covered owner or operator may restart or resume the temporarily ceased operation, activity, process or release fifteen minutes following an inspection by, and in the presence of, a governmental inspector.

g. The provisions of this section shall not apply to firefighting and police operations.

41. (New section) The hazard prevention committee shall make decisions by majority vote of those members present and voting. In the event of a tie vote, either hazard prevention coordinator may, within 30 days of the meeting at which the vote was taken, refer the matter in dispute to the hazard prevention arbitration board.

42. (New section) a. There is established within the department the Hazard Prevention Arbitration Board whose

purpose shall be to apply the principles of arbitration to resolve tie votes among members of hazard prevention committees. An arbitrator shall have no power to determine whether operations, activities, processes or releases constitute a hazard nor shall the arbitrator have power to interpret a collective bargaining agreement. The Hazard Prevention Arbitration Board shall resolve disputes ina a manner consistent with the purposes of this act.

b. Within 180 days of the effective date of this Act, the Governor shall appoint 30 concurrently serving hazard prevention advocates to serve as members of the Hazard Prevention Arbitration Board, who shall act as arbitrators. Any hazard prevention advocate who desires to serve as an arbitrator shall so advise the department. The department may by regulation change the total number of arbitrators. Arbitrators shall serve for two year terms, and shall not be removed prior to the expiration of their term except for cause. Arbitrators may be reappointed for successive terms. At least one half of the members of the Hazard Prevention Arbitration Board shall be employee hazard prevention advocates.

c. Arbitrators shall receive $250 per day or part thereof for service. A covered owner or operator may require an employee serving as an arbitrator to return to the employer the employee's base pay, if less than $250, if the covered owner or operator has paid the base pay to the employee. The department may increase this compensation by regulation.

d. The department shall submit to the hazard prevention coordinators the names of five members of the Hazard Prevention Arbitration Board who have been selected on a random basis and who reside within 50 miles of the facility. Within 10 days each hazard prevention coordinator shall delete up to two of the proposed arbitrators from the list, and from the remaining names the department shall select at random the arbitrator.

e. In addition to all powers normally granted to arbitrators, an arbitrator pursuant to this Act shall have the power to direct that particular actions be taken and to set conditions on activities. An arbitrator shall have no power to order a covered owner or operator to implement hazard elimination or reduction measures including but not limited to ventilation or lighting improvements, chemical substitutions, removal of asbestos and imminent or other hazards, wearing of personal protective equipment, use of water or air pollution control devices, or machine improvements.

f. An arbitrator shall hear a dispute within 30 days of submission and shall issue a decision within 30 days of the hearing. The Department shall cause the decision of the arbitrator to be published, and shall make arbitrator decisions available to the public upon request at a cost not to exceed the cost of printing or duplication.

g. The decision of the arbitrator assigned shall be final and binding, and shall have the same force and effect as an arbitration decision. An action to enforce or vacate the decision may be brought by the covered owner or operator or an employee who, within one year of the date on which the decision was made, is or was employed at the facility.

43. (New section) a. Joint labor-management safety, health or environmental committees created as part of a bona fide collective bargaining agreement, may function as hazard prevention committees if they fulfill or exceed the minimum requirements of this act, and the members of such committees may function as hazard prevention advocates and their chairpersons may function as hazard prevention coordinators. Nothing in this act shall be interpreted as lessening or eliminating the hazard prevention or related provisions, or past practices, of a bona fide collective bargaining agreement nor shall this act be interpreted to prevent any labor-management agreements or practices that provide additional or more comprehensive hazard prevention protections.

b. Nothing in this act shall be interpreted to authorize the Hazard Prevention Arbitration Board or any other agency or court to interpret the terms or meaning of a particular collective bargaining agreement.

44. (New section) The provisions of any other law to the contrary notwithstanding, no person shall be liable in any way for damages or equitable restitution arising from any action taken or not taken in the persons's capacity as a hazard prevention advocate or coordinator or as a member of a local emergency planning committee or a qualified community organization. The provisions of this section shall not be construed to exempt owners or operators from any liability for claims for which they are liable under this act or any other act. Except as specifically provided in this act, nothing in this act shall be construed to alter existing State law concerning liabilities of any kind.

45. (New section) a. No hazard prevention advocate or any other employee shall lose any pay, benefits, accrual of seniority or vacation time for exercising any rights afforded by this act or for participating in any meetings, training programs, inspections, accompaniment of any inspector, investigations, or other activities authorized or undertaken pursuant to the employee's good faith belief that such activities are authorized pursuant to this act. No person shall discharge, cause to be discharged, suspend, demote or otherwise discipline, penalize, discriminate, or take other adverse action, or cause adverse action to be taken, against an employee because the employee, or designee or employee representative, has acted pursuant to the employee's good faith belief as to the requirements or rights under this act. Discharge shall be considered irreparable harm for purposes of considering injunctive relief. If an employee's belief as to the

rights or requirements of this Act is found to be unreasonable, the maximum disciplinary action that may be taken shall be suspension without pay for five days; except that if an employee's belief, as to the rights or requirements of this act, is found to be unreasonable and the exercise of the rights have resulted in a cessation of work, then the maximum disciplinary action that may be taken against an employee shall be suspension without pay for 30 days for a second incident within three years, and shall be discharge for a third incident within three years.

b. Any waiver by a person of the benefits or requirements of this act shall be void. Any person who requires that another person waive any rights established pursuant to this act shall, upon conviction, be guilty of a crime of the fourth degree.

46. (New section) a. In addition to any other remedy provided by this act, or any other law, any employee who believes he has had adverse employment action taken against him by his employer for acting pursuant to the employee's good faith belief as to the requirements or rights under this Act may, within two years of obtaining knowledge of the adverse actions and the reasons therefor, file a complaint with the Department of Labor or with the Superior Court.

b. Within 30 days of its receipt of a complaint, the Department of Labor shall commence an investigation of the complaint which shall be completed within 90 days of receipt.

c. If, upon completion of the investigation, the Department of Labor determines that there is probable cause to believe that the complaint is valid in whole or in part, it shall refer the complaint to the Office of Administrative Law.

d. Within 60 days of the referral, the Office of Administrative Law shall commence an adjudicatory hearing on those portions of the complaint for which there was found to be probable cause. The hearing shall be conducted as a contested case pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), and P.L.1978, c.67 (C.52:14F-1, et. seq.) brought in the name of the Commissioner of the Department of Labor. The employee and the employee's representative shall be permitted to intervene upon request.

e. If evidence is introduced before a court or before an administrative law judge that tends to show that, prior to the adverse action, the employee exercised any right provided or took any action required by this act, the respondent shall be presumed to have taken the adverse action in violation of this section. The respondent may overcome this presumption upon demonstrating by clear and convincing evidence that the adverse action was taken for just cause not related to this act.

f. Within 30 days of the receipt of the recommendations of the administrative law judge, the Commissioner of the Department of Labor shall adopt, reject, or modify the recommendations. The decision of the Commissioner of the Department of Labor shall

be considered the final agency action on the matter and shall be subject only to review by a court of competent jurisdiction.

g. Nothing in this section shall be deemed to diminish the rights of any employee under any statute, common law, rule, or regulation, or under any collective bargaining agreement.

47. (New section) The Department of Labor or an employee may apply to the Superior Court for appropriate injunctive relief to restrain violations of section 46 of this act. The court may order any appropriate relief, including rehiring or reinstatement of the employee to his former position with back pay, benefits, and accrual of seniority. In any action in which the Commissioner of Labor or an employee is the prevailing or substantially prevailing party, the court shall award the Commissioner of Labor or the employee costs of litigation.

48. (New section) a. Whenever the Commissioner finds that an owner or operator of a facility has violated any provision of this act or any rule or regulation adopted pursuant to this act, he may:

(1) Issue an order requiring the owner or operator found to be in violation to comply in accordance with subsection b. of this section;

(2) Bring a civil action in accordance with subsection c. of this section;

(3) Levy a civil administrative penalty in accordance with subsection d. of this section; or

(4) Bring an action for a civil penalty in accordance with subsection e. of this section.

b. Whenever the commissioner finds that an owner or operator of a facility has violated any provision of this act or any rule or regulation adopted pursuant to this act, he may issue an order specifying the provision or provisions of this act or the rule or regulation of which the owner or operator is in violation, citing the action which constituted the violation, ordering abatement of the violation, and giving notice to the owner or operator of his right to a hearing on the matters contained in the order. The ordered party shall have 20 calender days from receipt of the order within which to deliver to the commissioner a written request for a hearing. This order shall be effective upon receipt and any person to whom such order is directed shall comply with the order immediately. A request for hearing shall not automatically stay the effect of the order.

c. The commissioner may institute an action or proceeding in the Superior Court for injunctive and other relief, for any violation of this act, or of any rule or regulation adopted pursuant to this act or order issued pursuant to this act and said court may proceed in the action in a summary manner. In any such proceeding the court may grant temporary or interlocutory relief.

Such relief may include, singly or in combination:

(1) A temporary or permanent injunction;

(2) Assessment of the violator for the costs of any investigation and for the cost of litigation;

(3) Assessment of the violator for any cost incurred by the State in removing, correcting or terminating any adverse effects resulting from any violation of any provision of this act or any rule, regulation or condition of approval for which the action under this subsection may have been brought;

(4) Assessment against the violator of compensatory damages for any actual damages caused by any violation of this act or any rule or regulation adopted pursuant to this act for which the action under this subsection may have been brought. Assessments under this subsection shall be paid to the State Treasurer, except that compensatory damages may be paid by specific order of the court to any persons who have been aggrieved by the violation.

d. The commissioner is authorized to assess a civil administrative penalty of not more than $2,500.00 for each violation provided that each day during which the violation continues shall constitute an additional, separate and distinct offense. No assessment shall be levied pursuant to this section until after the violator has been notified by certified mail or personal service. The notice shall include a reference to the section of this act or rule or regulation adopted pursuant to this act violated, a concise statement of the facts alleged to constitute a violation, a statement of the amount of the civil administrative penalties to be imposed, and a statement of the party's right to a hearing. The ordered party shall have 20 calendar days from receipt of the notice within which to deliver to the commissioner a written request for a hearing. After the hearing and upon finding that a violation has occurred, the commissioner may issue a final order after assessing the amount of the fine specified in the notice. If no hearing is requested, the notice shall become a final order after the expiration of the 20-day period. Payment of the assessment is due when a final order is issued or the notice becomes a final order. The authority to levy a civil administrative penalty is in addition to all other enforcement provisions provided in this act, and the payment of any assessment shall not be deemed to affect the availability of any other enforcement provisions in connection with the violation for which the assessment is levied. The department may compromise any civil administrative penalty assessed under this section in an amount the department determines appropriate.

e. Any owner or operator of a facility who violates the provisions of this act or any code, rule or regulation promulgated pursuant to this act shall be liable to a penalty of not more than $4,000.00 per day, to be collected in a civil action commenced by the department.

Any owner or operator of a facility who violates an administrative order issued pursuant to subsection b. of this section, or a court order issued pursuant to subsection c. of this

section, or who fails to pay an administrative assessment in full pursuant to subsection d. of this section is subject upon order of a court to a civil penalty not to exceed $10,000.00 per day of such violations.

Any penalty imposed pursuant to this subsection may be collected with costs in a summary proceeding pursuant to "the penalty enforcement law" (N.J.S.2A:58-1 et seq.). The Superior Court and the municipal court shall have jurisdiction to enforce the provisions of "the penalty enforcement law" in connection with this act.

f. Pursuit of any remedy specified in this section shall not preclude the pursuit of any other remedy provided by any other law. Administrative and judicial remedies provided in this section may be pursued simultaneously.

49. (New section) a. In addition to any other remedy provided by this act or any other act, any person alleging a violation of any provision of this act , or any rule or regulation adopted pursuant thereto, may bring an action against an owner or operator for enforcement or to restrain a violation in the Superior Court.

b. A person who has been injured by the failure of an owner or operator of a facility to comply with the provisions of this act, or any rule or regulation adopted pursuant thereto, may recover damages.

c. Any action brought pursuant to this act against an owner or operator for personal injury or property damage may be tried by jury.

d. If a factfonder finds that a violation of this act is outrageous, the factfinder may award punitive damages.

e. In an action in which the person suing either to enforce this act or restrain a violation this act is the prevailing or substantially prevailing party, the Court shall award costs of litigation.

50. Section 3 of P.L.1974, c.80 (C.34:1B-3) is amended to read as follows:

3. As used in this act, unless a different meaning clearly appears from the context:

a. "Authority" means the New Jersey Economic Development Authority, created by section 4 of this act.

b. "Bonds" means bonds or other obligations issued by the Authority pursuant to this act.

c. "Cost" means the cost of the acquisition, construction, reconstruction, repair, alteration, improvement and extension of any building, structure, facility including water transmission facilities, or other improvement; the cost of machinery and equipment; the cost of acquisition, construction, reconstruction, repair, alteration, improvement and extension of energy saving improvements or pollution control devices, equipment or facilities; the cost of lands, rights-in-lands, easements, privileges, agreements, franchises, utility extensions, disposal

facilities, access roads and site development deemed by the authority to be necessary or useful and convenient for any project or in connection therewith: discount on bonds; cost of issuance of bonds; engineering and inspection costs; costs of financial, legal, professional and other estimates and advice; organization, administrative, insurance, operating and other expenses of the authority or any person prior to and during any acquisition or construction, and all such expenses as may be necessary or incident to the financing, acquisition, construction or completion of any project or part thereof, and also such provision for reserves for payment or security of principal of or interest on bonds during or after such acquisition or construction as the authority may determine.

d. "County" means any county of any class.

e. "Development property" means any real or personal property, interest therein, improvements thereon, appurtenances thereto and air or other rights in connection therewith, including land, buildings, plants, structures, systems, works, machinery and equipment acquired or to be acquired by purchase, gift or otherwise by the authority within an urban growth zone.

f. "Person" means any person, including individuals, firms, partnerships, associations, societies, trusts, public or private corporations, or other legal entities, including public or governmental bodies, as well as natural persons. "Person" shall include the plural as well as the singular.

g. "Pollution control project" means any device, equipment, improvement, structure or facility, or any land and any building, structure, facility or other improvement thereon, or any combination thereof, whether or not in existence or under construction, or the refinancing thereof in order to facilitate improvements or additions thereto or upgrading thereof, and all real and personal property deemed necessary thereto, having to do with or the end purpose of which is the control, abatement or prevention of land, sewer, water, air, noise or general environmental pollution, including, but not limited to, any air pollution control facility, noise abatement facility, water management facility, thermal pollution control facility, radiation contamination control facility, wastewater collection system, wastewater treatment works, sewage treatment works system, sewage treatment system or solid waste disposal facility or site; provided that the authority shall have received from the Commissioner of the State Department of Environmental Protection or his duly authorized representative a certificate stating the opinion that, based upon information, facts and circumstances available to the State Department of Environmental Protection and any other pertinent data, (1) said pollution control facilities do not conflict with, overlap or duplicate any other planned or existing pollution control facilities undertaken or planned by another public agency or authority

within any political subdivision, and (2) that such facilities, as designed, will be a pollution control project as defined in this act and are in furtherance of the purpose of abating or controlling pollution.

h. "Project" means: (1)(a) acquisition, construction, reconstruction, repair, alteration, improvement and extension of any building, structure, facility, including water transmission facilities or other improvement, whether or not in existence or under construction, (b) purchase and installation of equipment and machinery, (c) acquisition and improvement of real estate and the extension or provision of utilities, access roads and other appurtenant facilities; and (2)(a) the acquisition, financing, or refinancing of inventory, raw materials, supplies, work in process, or stock in trade, or (b) the financing, refinancing or consolidation of secured or unsecured debt, borrowings, or obligations, or (c) the provision of financing for any other expense incurred in the ordinary course of business; all of which are to be used or occupied by any person in any enterprise promoting employment, either for the manufacturing, processing or assembly of materials or products, or for research or office purposes, including, but not limited to, medical and other professional facilities, or for industrial, recreational, hotel or motel facilities, public utility and warehousing, or for commercial and service purposes, including, but not limited to, retail outlets, retail shopping centers, restaurant and retail food outlets, and any and all other employment promoting enterprises, including, but not limited to, motion picture and television studios and facilities and commercial fishing facilities, commercial facilities for recreational fishermen, fishing vessels, aquaculture facilities and marketing facilities for fish and fish products and (d) acquisition of an equity interest in, including capital stock of, any corporation; or any combination of the above, which the authority determines will: (i) tend to maintain or provide gainful employment opportunities within and for the people of the State, or (ii) aid, assist and encourage the economic development or redevelopment of any political subdivision of the State, or (iii) maintain or increase the tax base of the State or of any political subdivision of the State, or (iv) maintain or diversify and expand employment promoting enterprises within the State; [and] (3) the cost of acquisition, construction, reconstruction, repair, alteration, improvement and extension of an energy saving improvement or pollution control project which the authority determines will tend to reduce the consumption in a building devoted to industrial or commercial purposes, or in an office building, of nonrenewable sources of energy or to reduce, abate or prevent environmental pollution within the State ; and (4) the cost of acquisition, construction, reconstruction, repair alteration, improvement or extension of a facility hazard abatement project. Project may also include: (i) reimbursement

to any person for costs in connection with any project, or the refinancing of any project or portion thereof, if determined by the authority as necessary and in the public interest to maintain employment and the tax base of any political subdivision and will facilitate improvements thereto or the completion thereof, and (ii) development property and any construction, reconstruction, improvement, alteration, equipment or maintenance or repair, or planning and designing in connection therewith.

i. "Revenues" means receipts, fees, rentals or other payments to be received on account of lease, mortgage, conditional sale, or sale, and payments and any other income derived from the lease, sale or other disposition of a project, moneys in such reserve and insurance funds or accounts or other funds and accounts, and income from the investment thereof, established in connection with the issuance of bonds or notes for a project or projects, and fees, charges or other moneys to be received by the authority in respect of projects and contracts with persons.

j. "Resolution" means any resolution adopted or trust agreement executed by the authority, pursuant to which bonds of the authority are authorized to be issued.

k. "Energy saving improvement" means the construction, purchase and installation in a building devoted to industrial or commercial purposes of any of the following, designed to reduce the amount of energy from nonrenewable sources needed for heating and cooling that building: insulation, replacement burners, replacement high efficiency heating and air conditioning units, including modular boilers and furnaces, water heaters, central air conditioners with or without heat recovery to make hot water for industrial or commercial purposes or in office buildings, and any solar heating or cooling system improvement, including any system which captures solar radiation to heat a fluid which passes over or through the collector element of that system and then transfers that fluid to a point within the system where the heat is withdrawn from the fluid for direct usage or storage. These systems shall include, but not necessarily be limited to, systems incorporating flat plate, evacuated tube or focusing solar collectors.

The foregoing list shall not be construed to be exhaustive, and shall not serve to exclude other improvements consistent with the legislative intent of this amendatory act.

l. "Urban growth zone" means any area within a municipality receiving State aid pursuant to the provisions of P.L.1971, c.64, or a municipality certified by the Commissioner of Community Affairs to qualify under such law in every respect except population, which area has been so designated pursuant to an ordinance of the governing body of such municipality.

m. "Facility hazard abatement project" means any device, equipment, improvement, structure, or system constructed or installed at an industrial or commercial facility the purpose of

which is to prevent, eliminate, or abate a hazard or release.

n. "Hazard" means any agent or condition or combination of agents and conditions that present an actual or potential adverse impact to human health, public safety or the environment.

o. "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of any hazard into the environment.

(cf: P.L.1983, c.282, s.2)

51. Section 6 of P.L.1974, c.80 (C.34:1B-6) is amended to read as follows:

6. A copy of any application for assistance under this act received by the authority shall be submitted to, and for the review and advice of, the Director of the Division of Economic Development. Prior to making any commitment for such assistance, the authority, after consultation with the director of said division, shall, by resolution duly adopted, find and determine, on the basis of all information reasonably available to it, that such assistance will tend to maintain or provide gainful employment for the inhabitants of the State, or will reduce the consumption, in a building devoted to industrial or commercial purposes, or in an office building, of nonrenewable sources of energy, or will eliminate and reduce environmental pollution derived from the operation of industry, utilities and commerce, or will prevent, eliminate or abate hazards or releases, and improve living conditions, and shall serve a public purpose by contributing to the prosperity, health and general welfare of the inhabitants of the State, and will tend to aid and assist in the economic growth, development or redevelopment of the political subdivision wherein it is to be located, and such finding and determination shall be conclusive for all purposes of this act.

The authority shall also find and determine, on the basis of all information reasonably available to it, that such assistance, or any part thereof, used to construct, improve or refinance any pollution control facility as defined by this act will not impair any obligation undertaken by any County Industrial Pollution Control Financing Authority created pursuant to P.L.1973, c.376 (C.40:37C-1 et seq.).

(cf: P.L.1983, c.282, s.4)

52. (New section) If any section, subsection, provision, clause, or portion of this act is found unconstitutional by a court of competent jurisdiction, the remainder of this act shall not be affected thereby.

53. (New section) There is established in the Department of Environmental Protection a special non-lapsing fund to be known as the "Hazard Elimination Fund." The "Hazard Elimination Fund" shall be credited with all fines and penalties imposed and collected pursuant to section 49 of this act, and all monies deposied in the fund shall be appropriated solely for the implementation and enforcement of the provisions of this act.

54. a. There is appropriated from the General Fund to the Department of Environmental Protection the sum of $1,315,000.00 to implement the provisions of this act. Of this amount the department shall allocate $200,000 each year for making technical assistance grants pursuant to section 20 of this act.

b. There is appropriated from the General Fund to the Department of Health the sum of $65,000.00 to implement the provisions of this Act.

c. There is appropriated from the General Fund to the Department of Labor the sum of $65,000.00 to implement the provisions of this act.

d. There is appropriated from the General Fund to the Department of Law and Public Safety the sum of $70,000.00 to implement the provisions of this Act.

55. This act shall take effect 180 days after enactment, except that the the Department of Environmental Protection, the Department of Health, the Department of Labor, and the Department of Law and Public Safety shall take any actions necessary between the enactment of this act and its effective date to insure the implementation of this act on its effective date.

STATEMENT

This bill would establish a comprehensive system designed to authorize local community groups and facility-based groups to conduct cooperative environmental and public health-oriented inspections of facilities where hazards may be present or may be released into the environment. The intent of this bill is to encourage New Jersey residents to participate, under clearly defined procedures, in the inspection and monitoring of such facilities, in order to augment the environmental and public health regulation of these facilities now conducted by governmental agencies. In addition, this bill is designed to aid in identifying and addressing environmental or public health problems originating at these facilities before they present a serious threat to the environment or the public health. This bill would not, however, increase the number of State environmental inspectors, establish new legal standards for hazardous exposures, or require owners or operators of facilities to abate specific hazards, except in certain emergency situations.

This bill would authorize the formation of three distinct types of inspection and monitoring groups, each with functions reflecting the needs of its membership: local emergency planning committees (LEPCs), qualified community organizations (QCOs) and hazard prevention committees (HPCs). In general this bill would apply to facilities in the manufacturing sector, as well as

in the following sectors: transportation; telephone communications; electric, gas, and sanitary services; chemical, petroleum and paint wholesalers; scrap and waste dealers; hotels; dry cleaning plants; hospitals and other health care facilities; medical and research laboratories; and state and local governments (excluding schools boards).

This bill would statutorily authorize the formation of a local emergency planning committtee (LEPC) in each municipality in the state. (Such committees were mandated pursuant to Title III of the "Superfund Amendments and Reauthorization Act of 1986," (SARA)(42 U.S.C. 11001 et seq.), and were authorized by Executive Order 161 of 1987.) An LEPC would be composed of an equal number of government officials and public members. Contiguous municipalities could agree to form joint LEPCs. Government members of an LEPC would include a representative of the local police, fire, health, or road and public works departments, the planning board, environmental commission, emergency management agency, and an elected official. The public members of an LEPC, to be appointed by the highest elected official of the municpality, would be drawn from a broad range of groups and interests. Owners of industrial facilities required under SARA to report information concerning discharges of hazardous substances into the environment would be required to submit emergency response plans and related documents to the LEPC, and the LEPC would be authorized to conduct enviornmental inspections of these facilities. This bill would also authorize municipalities to adopt ordinances imposing fees on owners or operators of facilities to enable local emergency planning committees to fund inspections of these facilities.

This bill would also authorize the establishment of qualified community organizations, which would be organized for the purpose of inspecting and monitoring environmental-related activities at specific facilities, and which would be composed of citizens living or working in the municipality in which the facility is located or within five miles of a specific facility. The establishment and activities of qualified community organizations would be governed by regulations adopted by the Department of Environmental Protection. Qualified community organizations would be authorized to inspect a facility up to four times per year, using an inspection team composed of up to six members of the qualified community organization and up to two technical experts. The inspections teams would be authorized to have full access to the facility, and would also be authorized to conduct non-intrusive environmental testing and sampling. Owners of facilities would be required to notify a qualified community organization of an unusual hazardous release, after which the qualified community organization would be authorized to inspect the facility once a month for a period of six months. This bill also establishes a grant program in the Department of

Environmental Protection to provide a qualified community organization with grants to hire experts to assist in facility inspections. This bill would encourage, but not require, agreements between owners or operators of facilities and qualified community organizations.

This bill also requires owners of facilities employing 20 or more employees to provide for the selection of a group of hazard prevention advocates at the facility, composed of an equal number of persons selected by the owner of the facility and by the employees at the facility. The number of hazard prevention advocates at each facility would be based on the number of employees at the facility. Hazard prevention advocates would be authorized to form a hazard prevention committee for the facility. Hazard prevention advocates would be trained and authorized to conduct inspections at the facility and to investigate releases into the environment. Hazard prevention advocates would be authorized, under a procedure established in this bill, to direct the owner or operator of a facility to temporarily cease or abate any condition or process at the facility constituting an imminent hazard to workers or the public health or environment, pending inventigation by a governmental agency. Existing joint labor-management safety, health, or environmental committees may function as hazard prevention committees if these committees meet or exceed the minimum requirements of this bill.

This bill also authorizes the New Jersey Economic Development Authority to finance the cost of projects designed to abate environmental hazards at facilities.

Finally, this bill would appropriate to the Department of Environmental Protection $1,310,000 ($200,000 of which is to be used for technical assistance grants to qualified community organizations and hazard prevention committees); $65,000 to the Department of Health; $65,000 to the Department of Labor; and $70,000 to the Department of Law and Public Safety to implement their respective responsibilities pursuant to this bill.

ENVIRONMENT

The "New Jersey Hazard Elimination Through Local Participation Act."

ASSEMBLY, No. 2832

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1990 SESSION

By Assemblymen SMITH, Gill, Doria, Naples, Pelly, Otlowski, Doyle, Cimino, Duch, Menendez, Schwartz, Pascrell, Roma, McGreevey, Spadoro, Assemblywoman Kalik, Assemblymen Patero, Ford, Schuber, Assemblywoman Randall, Assemblymen Jacobson, Girgenti, Rooney and Mazur

AN ACT to encourage local participation in the prevention and remediation of toxic and other hazardous threats to human health and the environment, supplementing Title 13 of the Revised Statutes, amending P.L.1974, c.80, and making appropriations.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. (New section) This Act shall be known and may be cited as the "New Jersey Hazard Elimination Through Local Participation Act."

2. (New section) The Legislature finds and declares that every citizen is entitled to an environment free of hazards; that a crisis exists in this State as a result of hazards in the environment that emanate from the workplace; that this crisis continues to exist and increase in severity despite extensive efforts to overcome it; that too often this State has sought to prevent hazards by adopting regulations and imposing penalties that take effect after the hazard has been created; that new prevention strategies are needed to supplement existing law to overcome this crisis; that such prevention strategies should not rely solely on additional standard-setting or routine enforcement by governmental bodies; and that the New Jersey "Worker and Community Right to Know Act" and the "Toxic Catastrophe Prevention Act" provide important information bases for the development of prevention strategies.

The Legislature further finds and declares that to be effective, prevention strategies require the active involvement of persons directly involved with and affected by activities that generate environmental and public health hazards; that active participation by, and education of, the public will help overcome public distrust of suspected hazardous facilities operating nearby; that active participation by, and education of, employees will help increase productivity; that the training and education of citizens is a vital part of any effective prevention strategy; that employees at facilities that generate environmental and public health hazards have a public function to play in prevention

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

strategies because of their immediate contact with the hazard-generating activities and their knowledge of and involvement in the activities which generate hazards; that it is the legal responsibility of owners or operators of facilities under current state and federal law to furnish a safe and healthy workplace which is free from hazards that cause or are likely to cause death or serious physical harm to employees and community residents; that cooperation among owners and operators of facilities, employees, residents and State and local government is required for viable prevention of hazards; that committees composed of representatives of employers and employees can make a unique contribution to protecting the public health and environment from threats posed by hazardous and toxic substances; that effective prevention strategies require a unified approach for the elimination of occupational and environmental hazards; that hazards generated inside facilities routinely escape into the environment and affect the public health; that hazards effecting employees and community residents have enormous public health and economic impacts including increased injury and disease; and that the emotional and financial costs of these impacts are borne by the employee's family, neighbors and friends, decreased productivity and tax revenues, higher medical insurance costs and greater burdens on the health care and welfare systems.

The Legislature therefore determines that it is in the public interest to establish a system of local participation in preventing or abating hazardous and toxic threats to public health and the environment.

3. (New section) As used in this act:

"Commissioner" means the commissioner of the Department of Environmental Protection.

"Corporation" means any profit or non-profit corporation and includes each incorporator, corporate officer, member of the Board of Directors or Trustees or 10% shareholder, and any successor of any sort to the above.

"Costs of litigation" means any expense incurred as part of the litigation of a matter, including expert witness fees. Reasonable attorney's fees shall be determined by current market rates for similar services, making such adjustments as are required in the interests of having such lawsuits brought.

"Covered industry" means any person which has operations generally assigned or that otherwise meet the criteria of a Standard Industrial classification (SIC), as designated in the 1987 Standard Industrial Classification Manual prepared by the Federal Office of Management and Budget, within the following Major Group Numbers, Group Numbers, or Industry Numbers, as the case may be: 20-39 (manufacturing); 41 (local and interurban transit); 42 (trucking and warehousing); 481 (telephone communications); 49 (electric, gas, sanitary services); 516-517 (chemical and allied products, and petroleum and petroleum

products wholesalers); 5093 (scrap and waste dealers); 5198 (paints, varnishes, and supplies); 7011 (hotels); 7216 (dry cleaning plants); 805 (nursing and personal care facilities) 806 (hospitals); 807 (medical and dental labs) 8731 (commercial, physical, biological research); 8734 (testing laboratories); and any facility which is operated by a local government or by the state or any department, bureau, political subdivision, agency, authority, or instrumentality thereof, excluding local, county and regional school boards. The department, in consultation with the Department of Health and the Department of Labor, may add, by rule or regulation adopted pursuant to the "Administrative Procedure Act, P.L.1968, c.410 (C.52:14B-1 et seq.), facilities or worksites, or classes of facilities or worksites, based on the department's judgement that hazards may potentially exist at these facilities or worksites and that inclusion of said facilities would effectuate the purposes and policies of this act.

"Covered owner or operator" means any owner or operator of a facility employing 20 or more employees for 15 or more days per year in a covered industry.

"Department" means the Department of Environmental Protection.

"Emergency Planning Document" means any document that is directly relevant to the evaluation, development or revision of an Emergency Response Plan and may include, but need not be limited to, documents prepared pursuant to the "Toxic Catastrophe Prevention Act," P.L.1985, c.403 (C.13:1K-20 et seq.), the "Worker and Community Right to Know Act," P.L.1983, c.315 (C.34:5A-1 et al.), or the Federal Act.

"Emergency Response Plan" means a written plan designed to respond to an unusual release, which shall include, but need not be limited to, procedures for treatment for exposed persons in the community, a detailed plan of evacuation of persons at the facility and in the community and a detailed plan for reentry into the facility or community.

"Employee" means any individual who performs for compensation services for and under the control and direction of an owner or operator of a facility, except that "employee" shall not include elected officials, members of boards and commissions, managerial employees, confidential employees or independent contractors.

"Employee representative" means an organization engaged in a collective bargining or collective negotiating relationship with an owner or operator of a facility, which relationship is valid under relevant state or federal labor law.

"Expert" means a person with appropriate professional or technical education, training or experience.

"Facility" means all buildings, equipment, structures and other stationary items which are located on a single site or on contiguous or adjacent sites used for the conduct of business and

which are owned or operated by the same person, and are within a covered industry.

"Federal Act" means Title III of the "Superfund Amendments and Reauthorization Act of 1986," 42 U.S.C. 11001 et seq.

"Hazard" means any agent or condition or combination of agents and conditions that present an actual or potential adverse impact to human health, public safety or the environment.

"Hazard Analysis" means an analysis of current operations which evaluates conditions that may result in a unusual release.

"Hazard Prevention Advocate" means a person selected pursuant to section 26 of this act.

"Hazard Prevention Coordinator" means a person selected pursuant to section 26 of this act.

"Hazard Prevention Committee" means a committee established pursuant to Section 24 of this Act.

"Immediate Family" means a spouse, child, sibling, parent, grandparent, grandchild, uncle, aunt, niece, nephew, first or second cousin, whether so related by blood, marriage, or adoption, and whether formally legitimated or not.

"Imminent hazard" means a hazard that poses a material risk of: immediate or delayed onset of serious physical injury, including, but not limited to, an exposure to substances that are suspected to or known to have a carcinogenic, teratogenic or mutagenic effect in humans or animals; an unusual release; or property damage in excess of $5000.

"Local Emergency Planning Committee" means the committees established pursuant to the federal act and section 4 of this act.

"Owner or Operator" means, in addition to the usual meaning thereof, every owner of record of any interest in a facility, any operator of a faciility, and any person which owns a majority interest in any other corporation which is the owner or operator of a facility.

"Person" means an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, the State of New Jersey and any political subdivision thereof, except that "person" shall not include local, county and regional school boards.

"Qualified Community Organization" means an association qualified pursuant to sections 12 through 14 of this act.

"Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of any hazard into the environment.

"Successor" means any subsequent holder of any significant interest or control in a predecessor without regard to how the interest or control was obtained including but not limited to stock purchase, asset purchase, assignment, conveyance, bankruptcy, merger and quasi-merger.

"Trade secret" means a trade secret as defined and determined

pursuant to section 15 of P.L.1983, c.315 (C.34:5A-15).

"Unusual Release" means a release:

(1) For which notification of the National Response Center is required by the "Comprehensive Environmental Response, Compensation, and Liability Act of 1980"(42 USC 9601 et. seq.); or

(2) For which emergency notification is required by Section 304 of the Federal Act; or

(3) For which notification to the Department of Environmental Protection is required pursuant to P.L.1976, c.141, (C.58:10-23.11 et seq.); or

(4) Which requires the temporary evacuation of one or more persons from their homes or places of work outside the facility at which the unusual release originated; or

(5) Which causes property damage in excess of $5,000 outside the facility at which the unusual release originated ; or

(6) Which causes acute health effects resulting in death or hospitalization to a person outside the facility at which the unusual release originated, or death of a person at the facility.

"Unusual release" shall not include a release otherwise permitted by State or federal law.

4. (New section) a. The State Emergency Response Commission shall direct each county and municipality in the State to establish a local emergency planning committee. A local emergency planning committee shall be responsible for implementing the requirements of the Federal Act, and shall constitute the Local Emergency Planning Committees required by the Federal Act. A local emergency planning committee shall be chaired by the chief executive officer of the county or municipality, or his designee. The membership of a local emergency planning committee shall include an equal number of local government officials and representatives of the public. Two or more contiguous municipalities may, by adoption of an ordinance by the governing body of each municipality, agree upon the creation of a joint local emergency planning committee.

b. The governmental members of a local emergency planning committee shall be either the chief officer or deputy of the:

(1) Police Department
(2) Health Department
(3)Fire Department
(4) Roads, Traffic of Public Works Department
(5) Environmental Commission or Department
(6) Emergency Management Office
(7) Planning Board
(8) Right-to-Know "Coordinator"
(9) An elected official

c. The chief executive officer of the county or municipality shall appoint one representative from each of the following groups, where existing, to be public members of a local

emergency planning committee:

(1) owners or operators of facilities subject to Section 302 of the federal act;

(2) medical, industrial hygiene, environmental and safety professionals;

(3) environmental advocacy groups;

(4) labor organizations;

(5) community groups, or, if none exists, volunteers from the public;

(6) firefighter employee representatives or, if none exists, volunteer firefighters; and

(7) broadcast and print media.

d. The initial appointments to a local emergency planning committee shall be made within 180 days of the effective date of this Act.

e. If for any reason any of the positions on a local emergency planning committee become vacant, the chief executive officer of the municipality or county shall appoint within 60 days a replacement to represent the affected group.

f. Any resident of the county in which the municipality is located may, upon 20 days notice to the municipality, initiate a suit in the Superior Court by means of action in lieu of prerogative writ to compel its chief executive officer to initiate an appointment or fill a vacancy.

g. The Chairperson and each member of a local emergency planning committee shall be appointed for a term of two years. The Chair and members may be reappointed following completion of the individual's term.

h. The names, addresses and telephone numbers of the members of a local emergency planning committee shall be filed with the clerk of the county, municipality or municpalities constituting the local emergency planning committee. The clerk of the county or municipality shall annually notify the State Police of the names, addresses and telephone numbers, and capacity in which serving, of each member of the Local Emergency Planning Committee. The State Police shall maintain a ledger of the names, addresses, telephone numbers and capacities in which serving of the members of each local Eeergency planning committee. The public shall have the right, upon request, to review this ledger, and copies of the ledger shall be made available to the public upon request at a cost not to exceed the cost or copying or printing.

i. Upon written request, the clerk of the county or municipality shall furnish any person with the names, addresses, and telephone numbers of the members of the Local Emergency Planning Committee.

5. (New section) a. Meetings of a Local Emergency Planning Committee shall be held pursuant to P.L.1975, c.231 (C.10:4-6 et. seq.). A Local Emergency Planning Committee shall meet at

least once every three months, and more often as it deems appropriate.

b. At its first meeting, a Local Emergency Planning Committee shall designate separately a daily and weekly newspaper to which official notices and statements shall be transmitted. In counties or municipalities where the primary language of 10% of the residents is a language other than English, a Local Emergency Planning Committee at its first meeting shall designate a newspaper published in each language other than English to which official notices and statements shall be transmitted. A Local Emergency Planning Committee shall annually redesignate the official publications.

c. A local emergency planning committee, within 15 days of its first meeting and annually thereafter, shall transmit to the newspapers designated pursuant to subsection b of this section the name, business address, and business telephone number of each member, and the name, business and home address, and business and home telephone number of the chairperson.

6. (New section) a. Within 180 days of the effective date of this act, the department shall notify each Local Emergency Planning Committee of the name and address of every facility covered by the Federal Act.

b. Each owner or operator of a facility covered by the federal act shall prepare and annually update its emergency response plan in a timely manner.

c. Within 240 days of the effective date of this act, each owner or operator of a facility covered by the Federal Act shall submit to the Local Emergency Planning Committee its current emergency response plan and hazard analysis. The owner or operator of the facility shall promptly inform the Local Emergency Planning Committee of any relevant changes that will be occuring at the facility as such changes are expected to occur, and shall within 60 days of the changes submit a revised emergency response plan and hazard analysis to the Local Emergency Planning Committee.

d. Upon written request from a local emergency planning committee, an owner or operator of a facility shall provide within seven working days emergency planning documents and any additional information which the Local Emergency Planning Committee deems necessary for evaluating the emergency response plan.

e. A local emergency planning committee may at any time direct the owner or operator of a facility to revise or update its emergency response plan.

7. (New section) The New Jersey State Police Office of Emergency Management, in consultation with the department, may adopt, pursuant to the "Administrative Procedure Act," regulations prescribing the form, content and documentary support for an emergency response plan and hazard analysis and

specifying emergency planning documents for all facilities or a particular class of facilities.

8. (New section) a. At any time following the submission of the information required by section 6 of this act, a local emergency planning committee may determine to inspect a facility. The inspection shall be made by no more than six persons on a local emergency planning committee, composed of equal numbers of governmental and public representatives, who may be accompanied by additional non-member experts.

b. A local emergency planning committee shall be authorized to issue subpoena and to take any other action necessary to develop evidence necessary to support a warrant to inspect a facility. The Local Emergency Planning Committee may apply in its own name ex parte to the Superior Court for the issuance of a warrant to inspect a facility. A subpoena may be issued prior to any attempt to contact the owner or operator of the facility.

c. The inspecting members of a local emergency planning committee shall receive necessary instruction from the owner or operator of the facility on the proper use of any personal protective equipment that must be used during the inspection. The owner or operator of the facility shall provide the inspecting members of the Local Emergency Planning Committee with personal protective equipment needed to inspect the facility. Inspecting members of a local emergency planning committee shall comply with all safety rules and practices of the owner or operator of the facility including use of personal protective equipment.

d. A local emergency planning committee shall not be required to give the owner or operator of the facility prior notification of the inspection. If the owner or operator of the facility is to be notified by a local emergency planning committee prior to an inspection, written notice of the inspection shall be given to the appropriate hazard prevention coordinators the same time notice is given to the owner or operator of the facility. The hazard prevention coordinators may accompany the inspecting members of a local emergency planning committee on the inspection. During or after the inspection inspecting members of a local emergency planning committee, and their accompanying experts, may speak confidentially with any employee at the facility.

e. Any member of a local emergency planning committee functioning in that capacity may be denied access to a facility during a fire, unusual release, or similar emergency if, in the opinion of the highest ranking state or municipal police officer at the facility at the time of the emergency, the presence of the local emergency planning committee member would interfere with the suppression of the emergency, or would endanger the health or safety of the local emergency planning committee member.

9. (New section) a. The owner or operator of a facility shall

have the duty to cooperate fully with an inspection conducted pursuant to section 8 of this act. The Local Emergency Planning Committee shall not denied access to any area, production process, part or portion of the facility on the grounds that trade secret or proprietary information might be disclosed. Any person who knowingly discloses a trade secret gained on an inspection conducted by a local emergency planning committee to a competitor of the owner or operator of the facility or to anyone who would reasonably be expected to disclose the secret or information to a competitor shall, upon conviction, be guilty of a crime of the third degree.

b. The owner or operator of the facility shall not be liable for injuries occurring to inspecting members of the Local Emergency Planning Committee and accompanying experts during an inspection of a facility if:

(1) The injuries are due to simple negligence of the owner or operator of the facility; and

(2) The owner or operator of the facility clearly warned the injured party of the danger prior to the injury; and

(3) The owner or operator of the facility provided the necessary personal protective equipment and provided sufficient instruction for a layperson on how to use such equipment to enable a reasonable person to avoid the danger.

c. The inspecting members of the Local Emergency Planning Committee or their experts may use non-destructive means to document activities and conditions in the facility. The inspecting members of the Local Emergency Planning Committee or their experts may take air, water or soil samples, and conduct other forms of non-destructive environmental testing. The Local Emergency Planning Committee, in the course of monitoring or sampling, may take photographs and may leave and retrieve test equipment at the facility.

d. If the owner or operator of a facility receives notice from any agency of the State or federal government that it may be inspected, the owner or operator of the facility shall promptly notify the Local Emergency Planning Committee of the planned inspection. A governmental and a public member of a local emergency planning committee may accompany any such inspector.

10. (New section) a. The governing body of a municipality may adopt an ordinance to provide for personnel, administrative and all other reasonable costs to be incurred by a local emergency planning committee in the administration of this act, including but not limited to costs of record retention and public access to retained records.

b. All fees imposed pursuant to this section shall be paid by the owner or operator of a facility to the Local Emergency Planning Committee.

c. In the absence of an ordinance adopted pursuant to

subsection a of this section, a local emergency planning committee may direct the owner or operator of a facility to pay for the local emergency planning committee's costs in reviewing and evaluating the facility emergency response plan, which may include, but need not be limited to, the costs of retaining experts. The fee charged may include a surcharge not to exceed 10% of these costs to cover general administrative, record-keeping, overhead and other expenses of the Local Emergency Planning Committee not directly attributable to consideration of a particular Emergency Response Plan, unless an ordinance passed pursuant to subsection a of this section provides to the contrary.

11. (New section) A qualified community organization shall be authorized to inspect a facility, report on the results to interested parties and discuss means of eliminating hazards with the owner or operator of the facility and the hazard prevention advocates selected at the facility.

12. (New section) a. An organization may become a qualified community organization pursuant to the petition process set forth in this section and sections 13 and 14 of this act.

b. Each petition submitted for qualification shall designate the name and address of a specific facility to be inspected; and the name, addresses and telephone numbers of the Community Organization and the Community Organization's officer(s). Each petition shall be signed by the person who collected the signatures contained in it, and shall state that all signers of the petition revoke their name from all prior petitions for the same facility. All signatories shall live or work within the municipality in which the facility to be inspected is located or within five miles of the facility to be inspected, and shall at least 18 years of age. All signatures shall be accompanied by residential or work addresses and date of signing.

c. No individual may be an inspector or qualified community organization officer if the individual or any member of his immediate family:

(1) Is or within the previous year has been employed by, or served as a contractor to, the owner or operator of the facility.

(2) has or had within the previous year, any financial interest in the owner or operator of the facility, or has transacted more than $5000 in business with the owner or operator of the facility within the past year.

(2) Is employed by a competitor of the owner or operator of the facility.

d. No person collecting signatures shall receive any pay or remuneration of any kind for time spent in collecting signatures.

13. (New section) All petitions shall be submitted to the Department. Signatures and petitions submitted shall be presumed valid until declared invalid by the commissioner, and an organization's petitions shall be accepted upon presentation of 50

signatures. Upon receipt of the signed petitions, the department shall immediately forward copies of the newly filed petition to the hazard prevention coordinators, the owner or operator of facility and all other qualified community organizations for the facility. The department shall simultaneously transmit copies of all the currently effective petitions of all other qualified community organizations for the facility to the petitioning qualified community organization.

14. (New section) a. Within 30 days of its receipt of a petition from the department, a qualified community organization or an owner or operator of facility may challenge a petition by submitting to the department evidence of the invalidity of the petition, or of the signatures. For purposes of this section, evidence shall include, but shall not be limited to, certified statements, maps, petitions, and copies of signatures.

b. Upon receipt of the challenger's evidence, the department will conduct an investigation of those allegations supported by evidence, which investigation shall include, but shall not be limited to, providing the challenged qualified community organization with copies of the evidence and requesting a response and additional evidence from the challenged qualified community organization.

c. If the department finds probable cause to consider a petition to be invalid, it shall notify the challenged qualified community organization's officers and the owner or operator of the facility to have been inspected by the qualified community organization of the reasons for the department's finding, and that the qualified community organization's qualification will lapse if it does not, within ten 10 days of receipt of the notice, submit a new petition, or a sufficient number signatures to validate the previously filed petition.

d. If a qualified community organization does not submit to the Department in a timely manner a new valid petition, or sufficient valid signatures to validate the previously filed petition, then the Department shall notify the challenged Qualified Community Organizations that its qualifications has lapsed.

e. If the Department finds there is no probable cause to question the validity of a challenged Qualified Community Organization's petition, either as initially submitted, or as resubmitted or supplemented subsequent to a probable cause finding, then the Department shall notify the challenging and challenged Qualified Community Organizations that the qualification will continue.

f. The non-prevailing Qualified Community Organization, within ten days of receipt of a notice of lapsed qualification, or of continued qualification, may file a complaint with the Department, which shall refer the complaint to the Office of Administrative Law, before which the proceeding shall be

conducted as a contested case pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1, et seq.), and P.L.1978, c.67 (C.52:14B-1, et seq.).

g. Within 30 days of the receipt of the recommendations of the administrative law judge, the Commissioner shall adopt, reject or modify the recommendations. The decision of the Commissioner shall be considered the final agency action on the matter, and shall be subject only to review by a court of competent jurisdiction.

h. A qualified community organization established pursuant to this act shall be qualified to inspect a specific facility for a period of one year from the date of the initial petition submission. Following expiration of the qualification, the organization may requalify pursuant to section 12 of this act.

i. The Department shall maintain a file by facility of the names, addresses and telephone numbers of each Qualified Community Organization, and Qualified Community Organization officer. The information in the file shall be available to the public upon request.

15. (New section) a. Inspections by qualified community organizations shall be conducted by a team of not more than six inspectors and two experts. A qualified community organization desiring the inspection shall give reasonable notice to each other qualified community organization for the facility not less than ten days prior to the date of the proposed inspection, of a date, time and place for an inspection planning meeting. At or immediately following the inspection planning meeting, the initiating qualified community organization shall select the inspection team in such a way as to provide that each qualified community organization shall have, to the extent possible, an equal number of inspectors on the inspection team. The initiating qualified xommunity organization may designate at least one expert. If non-initiating Qualified Community Organizations suggest the name(s) of (an)other expert, the initiating Qualified Community Organization must designate at least one expert suggested by a non-initiating qualified community organization. The department, within one year of the effective date of this act, shall adopt, pursuant to the "Administrative Procedure Act," rules and regulations providing for the selection, composition and functioning of inspection teams.

b. Commencing nine months after the effective date of this act, periodic inspections may be conducted once during each calendar quarter by a qualified community organization inspection team. A qualified community organization may schedule a periodic inspection upon 15 days notice to the owner or operator of the facility. This notice shall be provided to the facility hazard prevention coordinators and the local emergency planning committee. On any inspection, one governmental and

one public member of the local emergency planning committee and the facility hazard prevention coordinators may accompany the inspection team.

16. (New section) a. The owner or operator of the facility shall notify all Qualified Community Organization(s) of an unusual release within three days of its occurrence.

b. Within 20 days of knowledge of an unusual release, a qualified community organization may schedule an emergency inspection by giving the owner or operator of the facility, the hazard prevention coordinators, and all other qualified community organizations at least three days notice. No more than one emergency inspection shall be conducted in response to one unusual release. For a six month period following one or more unusual releases, periodic inspections may be performed once each month.

c. Any member of a qualified community organization inspection team may de denied access to a facility during a fire, unusual release, or similar emergency, if, in the opinion of the highest ranking state or municipal police officer at the facility at the time of the emergency the presence of the inspection team member would interfere with the suppression of the emergency, or would endanger the health or safety of the inspection team member.

17. (New section) a. Within ten days of notice of a periodic inspection, the owner or operator of the facility shall provide the initiating qualified community organization with any requested document in the possession of the owner or operator of the facility concerning hazard prevention, response or analysis.

b. The inspection team shall receive necessary instruction from the owner or operator of the facility on the proper use of any personal protective equipment that must be used during the inspection prior to the date of the inspection. The owner or operator of the facility shall provide the inspection team with any personal protective equipment needed to inspect the facility. The inspection team shall comply with all safety rules and practices of the owner or operator of the facility including use of personal protective equipment. Members of the inspection team may, during the inspection or immediately afterward, speak confidentially with any person at the facility. The inspection team shall not be denied access to any area, production process, part or portion of the facility on the grounds that trade secret information might be disclosed.

c. Any person who knowingly discloses a trade secret gained on an inspection to a competitor of the owner or operator of the facility or to anyone who would reasonably be expected to disclose the secret or information to a competitor shall, upon conviction, be guilty of a crime of the third degree.

18. (New section) The owner or operator of the facility shall not be liable for injuries occurring to members of the inspection

team if:

a. the injuries are due to simple negligence of the owner or operator of the facility; and

b. the owner or operator of the facility warned the injured party of the danger prior to the party's encountering it; and

c. the owner or operator of the facility provided the necessary personal protective equipment to avoid the danger and provided sufficient instruction for a layperson on how to use such equipment.

19. (New section) The inspection team may use non-destructive means to document hazardous or potentially hazardous activities and conditions in the facility. The inspection team may take air, water or other samples, or do other forms of testing. The inspection team may, in the course of monitoring or sampling, leave and retrieve test equipment at the facility.

20. (New section) a. The department shall develop and provide to local emergency planning committee members, qualified community organization members, and hazardo prevention advocates educational materials which explain their rights and responsibilities established pursuant to this act, and which explain the enforcement mechanisms provided by existing federal and State law concerning hazard prevention and abatement.

b. The department shall establish a technical assistance grant program designed to make technical assistance grants available to assist qualified community organizations and hazard prevention committees in conducting inspections of facilities utilizing experts chosen by the qualified community organization or the hazard prevention committee. Costs eligible for reimbursement by a technical assistance grant shall include, but need not be limited to, travel and lodging expenses of experts, consulting fees, laboratory costs, and report preparation costs. A qualified community organization which is qualified for more than one facility may receive grants for each facility. No qualified community organization shall receive more than four grants per year.

c. To be eligible for a technical assistance grant a qualified community organization or hazard prevention committee shall submit information to the department pursuant to this subsection.

(1) At least 30 days prior to an inspection of a facility, a qualified community organization or hazard prevention committee shall submit to the department a notice of intent to seek reimbursement for inpection related expenses. This notice shall contain the name and address of any expert for whose expenses reimbursement is sought. If a qualified community organization or hazard prevention committee does not provide a timely notice of intent, it will be eligible for reimbursement for inspection related expenses only to the extent that funds are available, and will not be entitled to notice, prior to the inspection, of funds availability.

(2) Within 45 days following an inspection, a qualified community organization or hazard prevention committee shall submit to the department invoices or receipts documenting expenses for which reimbursement is sought.

(3) Within 45 days following an inspection, a qualified community organization or hazard prevention committee shall submit to the department the written inspection report required by this act and certification that this inspection report has been provided to the owner or operator of the facility, the local emergency planning committee and the hazard prevention committee.

d. A qualified community organization or hazard prevention committee which meets the eligibility criteria established in subsection c. of this section may receive a technical assistance grant of up to $3,000. per year per inspected facility from the department. The maximum amount of a technical asistance grant auhthorized pursuant to this subsection shall be annuallay adjusted by the department to account for changes in the consumer price index.

e. The department, within 10 days of receipt of a notice of intent to seek reimbursement for expenses, shall advise a qualified community organization or a hazard prevention committee in writing as to whether reimbursement funds are available.

f. Any expenses for which a qualified community organization or hazard prevention committee seeks reimbursement under this section shall be presumed qualified for reimbursement, unless the department specifically notifies the qualified community organization or hazard prevention committee to the contrary within 30 days of receipt of the invoices and expenses and inspection report. This period may be extended for up to 45 days upon the department's notification to the qualified community organization or hazard prevention committee, within 15 days of receipt of either the invoices and expenses or the inspection report, that additional information is required.

g. The department may adopt, pursuant to the "Administrative Procedure Act," any rules or regulations necessary to implement the provisions of this section. In adopting such regulations, the department shall provide that the maximum number of qualified community organizations and hazard prevention committeess are eligible to receive technical assistance grants.

21. (New section) a. Within 45 days following an inspection conducted pursuant to section 11 of this act, the initiating qualified community organization shall transmit a written report of the inspection team's findings and concerns regarding hazards at the facility to the owners or operators of the facility. The inspection team shall provide a copy of any report to the department, the local emergency planning committee, and the Hazard Prevention Coordinators, if any. The owner or operator

of the facility shall cause copies of any report to be available for inspection and copying by members of the public during regular business hours.

b. Within 45 days of the submission of the initial report, the owner or operator of the facility and the inspection team shall convene a meeting to discuss any additional activity which may be appropriate as a result of the inspection. The department, the local emergency planning committee and hazard prevention coordinators shall be notified of the time and place of the follow-up meeting, at which the department, a governmental and public member of the local emergency planning committee, and each hazard prevention coordinator may be present.

22. (New section) a. A qualified community organization and the owner or operator of a facility may enter into written agreements concerning release prevention arising from an inspection conducted pursuant to section 11 of this act. This written agreement shall be deemed a contract enforceable by the owner or operator of the facility or any person residing or working in the municipality in which the facility is located or within five miles of the facility, unless specifically and mutually agreed upon to the contrary. The department, any other qualified community organization, the local emergency planning committee, and the hazard prevention coordinators shall have the opportunity to comment in writing on a proposed agreement prior to the signing of the final agreement.

b. The owner or operator of the facility shall make available a copy of any agreement entered into pursuant top subsection a of this section to any person making a written request therefor.

c. Nothing in this section shall be deemed to limit any otherwise lawful agreement between an owner or operator of a facility and any other person.

23. (New section) The department and the local emergency planning committee shall notify the qualified community organization of their inspections of a facility conducted pursuant to any State or Federal law when the owner or operator of the facility is given advance notice of the inspection. The qualified community organization shall be authorized to have two representatives accompany the inspection.

24. (New section) Every covered owner or operator shall cause hazard prevention advocates to be selected at each of his facilities, except that an covered owner or operator which is a state appointing authority, a county, or a municipality with multiple facilities within a county, may submit to the department for approval an alternate plan providing for the selection of hazard prevention advocates selected from all or some of that employer's facilities within the county. Alternate plans shall allow hazard prevention advocates to exercise the authority granted pursuant to this act at any of their employer's facilities within the county. Alternate plans shall allow employee

representatives to select one designated representative at each facility with five or more employees. The proposed alternate plan shall be approved by all affected employee representatives.The plan shall be deemed accepted by the department unless the department within 30 days of receipt of the plan advises each state appointing authority, or county or municpality that it has rejected the plan. This period may be extended for up to 45 days, upon the department's request to the covered owner or operator for additional information. The department may adopt, pursuant to the "Administrative Procedure Act," regulations setting forth requirements for alternate plans.

25. (New section) At least two hazard prevention advocates shall be selected at each facility of a covered owner or operator. The number of hazard prevention advocates shall be determined by the number of employees in the facility, or, with respect to alternate plans, by the number of employees employed by the covered owner or operator, in accordance with the following formula:

20–35 employees–2 hazard prevention advocates
36–49 employees–4 hazard prevention advocates
50–99 employees–6 hazard prevention advocates
100–249 employees–8 hazard prevention advocates
250–375 employees–10 hazard prevention advocates
376–499 employees–12 hazard prevention advocates
500 and more employees–14 hazard prevention advocates

The number of hazard prevention advocates shall be revised annually or whenever the number of employees varies by more than 20%.

26. (New section) a. Hazard prevention advocates and hazard prevention coordinators shall be selected pursuant to this section.

b. At facilities where there is an employee representative representing employees, the employee representative shall designate one half of the hazard prevention advocates. A hazard prevention coordinator shall be selected by the employee representative from these hazard prevention advocates . At facilities where different employees are represented by different employee representatives, hazard prevention advocates shall be designated in proportion to the number of employees represented at the facility by an employee representative. The employee representative representing the greatest number of employees shall select the hazard prevention coordinator.

c. At facilities where there is no employee representative, employees shall select one half of the hazard prevention advocates through a secret ballot election conducted every two years by the covered owner or operator. All employees shall be eligible to vote and shall be given the opportunity to vote during their normal working hours at a location or locations at or contiguous to the facility for which the committee membership is being decided. Nominees receiving the most votes shall be

elected. The department, within nine months of the effective date of this act, shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et. seq.), rules and regulations setting forth nominating, balloting and vote challenging procedures for the selection of hazard prevention advocates at facilities where there is no employee representative.

d. At facilities where there is no employee representative, the employee hazard prevention advocates shall select from among themselves a hazard prevention coordinator.

e. A covered owner or operator shall designate one half of the hazard prevention advocates and one hazard prevention coordinator at every facility.

f. In the event of a vacant hazard prevention advocate position, a replacement shall be selected within 30 days, pursuant to the selection procedures set forth in this section, except that in facilities where there is no employee representative, the employee hazard prevention advocates shall select an employee to fill the vacant hazard prevention advocate position.

g. Hazard prevention advocates may be reappointed or re-elected. All hazard prevention advocates must be employed at the facility. Alternate hazard prevention advocates may be selected by the respective hazard prevention coordinators to substitute for hazard prevention advocates who are not available.

i. The powers of the hazard prevention coordinator may be exercised by an alternate or designee of the hazard prevention coordinator.

27. (New section) a. Every covered owner or operator shall prominently post and annually distribute to every employee at the facility the names and work locations of all hazard prevention advocates. Such notice shall be provided within 30 days after any election or selection of new hazard prevention advocates.

b. Within nine months after the effective date of this Act, the covered owner or operator shall notify the Department in writing of the name and residential address and telephone numbers of each hazard prevention advocate and alternate advocate, and shall within seven days notify the Department in writing of the names, residential addresses and telephone numbers of new hazard prevention advocates and and alternate advocates

c. Within seven days of receipt of a written request, the covered owner or operator shall notify any person of the names, residential address and residential phone numbers of each hazard prevention advocate and alternate hazard prevention advocate.

28. (New section) The hazard prevention advocates selected at each facility shall form a hazard prevention committee. A hazard prevention committee shall hold regular meetings at least once each month at a date, time, and location agreed to by the hazard prevention committee. Special hazard prevention committee meetings to discuss any imminent hazard shall, at the request of a hazard prevention coordinator, be held as soon as

practicable. The covered owner or operator shall prominently post in advance the date, time and location of each regular meeting of a hazard prevention committee.

29. (New section) a. The hazard prevention coordinators shall develop the agenda of all hazard prevention committee meetings. Every regular meeting shall include a review of the minutes of the previous regular meeting and all special meetings that have occurred after the previous regular meeting. Agendas shall be subject to approval by majority vote of the hazard prevention committee.

b. Either hazard prevention coordinator may invite members of the local emergency planning committees, experts on hazard identification and control, members of the qualified community organization and/or citizens expressing concern about releases from the facility to hazard prevention committee meetings. Each hazard prevention coordinator may invite no more than two non-employees to a hazard prevention committee meeting, except that a larger number of employees may be invited by mutual agreement of the hazard prevention coordinators.

c. Minutes shall be recorded of all hazard prevention committee meetings. The minutes shall at a minimum document attendance, identify any hazards or releases discussed, summarize decisions reached and any outstanding disagreements that prevent an agreement being reached. The covered owner or operator shall insure that meeting minutes are typed within seven days of the meeting. The minutes must be signed by both hazard prevention coordinators to indicate that the minutes are complete and accurate. The covered owner or operator may, with the written consent of both hazard prevention coordinators, redact any portion of the minutes that may disclose a trade secret, except if the person requesting is a governmental agency.

d. All activities of a hazard prevention committee shall take place at the facility during normal working hours unless provided otherwise in this act. The hazard prevention committee may by a two-thirds majority vote alter the place or time for the conduct of meetings or other activities authorized or required pursuant to this act.

e. Copies of hazard prevention committee meeting minutes shall be:

(1) Prominently posted for at least ten working days by the covered owner or operator within the facility within seven days of the date in which the meeting was held;

(2) Provided to all hazard prevention committee members within seven days of the date on which the meeting was held;

(3) Provided upon request to the department, the local emergecny planning committee, and each qualified community organization approved for that facility within 14 days of a request therefore.;

(4) Retained by the covered owner or operator ot its successor

for a period of 30 years:

30. (New section) a. The hazard prevention coordinators shall inspect part or all of the facility for hazards and surrounding areas affected or potentially affected by releases from the facility at least once each month. The hazard prevention coordinators shall cause a written report to be made of hazards and releases found on each inspection. The report shall be distributed to all hazard prevention advocates at least three days prior to the next regularly scheduled meeting of the hazard prevention committee. This report shall be attached to and considered a part of the next regularly scheduled hazard prevention committee meeting minutes. The hazard prevention committee shall determine every six months a schedule of areas it shall inspect.

b. The hazard prevention coordinators shall as soon as practicable investigate all accidents, near-misses, explosions, imminent hazards, unusual releases, or hazardous exposures. The coordinators shall cause to be made a written report of any such investigation. The report shall be provided to all hazard prevention advocates at least three days prior to the next regularly scheduled hazard prevention committee meeting. This report shall be attached to and considered a part of the next regularly scheduled hazard prevention committee meeting minutes. The covered owner or operator shall notify the hazard prevention coordinators immediately of any occurrences to be investigated pursuant to this subsection.

c. The hazard prevention coordinators shall be authorized to accompany all environmental, fire, safety, and health inspectors, qualified community organization and local emergency planning committee inspectors, and consultants retained by a covered owner or operator or an employee representative, on inspections and investigations of a facility. A covered owner or operator shall provide timely notification to the hazard prevention coordinators of the time of any inspection for which the covered owner or operator is given advance notice. In the event of an inspection conducted without advance notice, a covered owner or operator shall, immediately upon the arrival of the inspectors or consultants at the facility, notify the hazard prevention coordinators.

31. (New section) a. The hazard prevention coordinators shall receive from the covered owner or operator on a timely basis the facility Emergency Response Plan, Hazard Analysis and any revision thereof; any inspection reports from government agencies and from the Qualified Community Organization; and written complaints, alleged violations,suggestions, and inquiries from employees, government agencies, and members of the public concerning hazards at the facility. Either hazard prevention coordinator may request from a covered owner or operator any

emergency planning document, which the covered owner or operator shall provide within seven days. The covered owner or operator shall allow each hazard prevention coordinator reasonable opportunity to observe measuring, monitoring, or sampling for hazards.

b. A covered owner or operator shall inform the hazard prevention advocates of any industrial hygiene and environmental monitoring and medical surveillance protocols prior to their institution. The hazard prevention committee shall be authorized to review such protocols.

c. A covered owner or operator shall inform all hazard prevention advocates of all hazard indentification training programs. The hazard prevention committee shall have the authority to review and approve all hazard identification and prevention training programs consistent with existing law.

32. (New section) a. A covered owner or operator may, in writing, direct hazard prevention advocates to notify a supervisor when they take time to fulfill their functions under this act. Hazard prevention advocates should use reasonable care when scheduling time to perform their functions so as to minimize the impact upon business operations.

b. Every covered owner or operator shall allow each employee hazard prevention advocate to use a minimum of 16 hours each month, and, at facilities with 500 or more employees a minimum of 22 hours each month, during the employee's normal working hours to:

(1) write inspection reports or parts thereof;

(2) review copies of relevant reports, complaints, plans, and documents relating to the activities of hazard prevention advocates;

(3) research and write recommendations concerning the elimination and reduction of hazards;

(4) investigate complaints concerning hazards;

(5) discuss with public officials and others possible improvements in Emergency Response Plans;

(6) review, discuss, research and suggest revisions in the facility Hazard Analysis and other emergency planning documents so as to prevent unusual releases; and

(7) conduct all other business proper to the functioning of the hazard prevention advocates.

33. (New section) Hazard prevention advocates shall have access at all times to all parts of the facility to conduct their business. A covered owner or operator may designate a representative to whom as much advance notification as practicable of requests for access to the facility outside of regular working hours shall be given.

34. (New section) a. A covered owner or operator shall assure, at his expense, that all employee hazard prevention advocates annually receive hazard recognition and prevention and

unusual release training. This training shall be provided by experts, shall include information on releases and hazards pertinent to the facility as well as procedures and plans to prevent and minimize releases, and shall include an explanation of the provisions of this Act. Training for employees working in a facility covered by the Federal Act or P.L. 1983, c.315 shall include an explanation of the provisions of these laws.

b. The department and the Department of Health, within one year of the effective date of this Act, and in consultation with the Department of Labor, shall jointly adopt, pursuant to the "Administrative Procedures Act," rules or regulations establishing minimum requirements for training and qualifications of experts to conduct this training. The department shall not adopt any rule or regulation concerning training which is covered by an existing standard adopted by the federal Occupational Safety and Health Administration.

c. The training provided pursuant to this section may cover relevant hazards and releases notwithstanding that one or more governmental agencies may have failed to issue standards or require training concerning the hazards or releases.

d. Hazard prevention advocates shall review and hazard prevention committees shall approve, the content, methods, and materials distributed to employees, the selection of trainers, and the scheduling of training under this section. A decision concerning approval or disapproval by the hazard prevention committee shall be reflected in hazard prevention committee meeting minutes.

35. (New section) a. The department, in consultation with the Department of Health, shall provide training by experts, updated as needed, to two hazard prvention advocates, at least one of whom shall be an employee hazard prevention advocate, concerning the recognition and prevention of unusual releases from facilities where unusual releases may occur. The covered owner or operator shall compensate the hazard prevention advocates at their regular rate of pay.

b. The department, within one year of the effective date of this act, shall adopt, pursuant to the "Administrative Procedure Act," any rules and regulations necessary to implement the provisions of this section.

36. (New section) a. Every covered owner or operator shall assure, at its expense, that all employees who are not hazard prevention advocates will receive annual instruction concerning hazards at the facility and release prevention. This instruction shall be provided by experts, who may be hazard prevention advocates, and shall include information on releases and imminent hazards as well as any facility procedures and plans to prevent and minimize releases, and shall include an explanation of the provisions of this Act. Training for employees employed at a facility covered by the Federal Act or P.L.1983, c.315 shall

include an explanation of the provisions of these laws which apply to the facility.

b. The instruction provided pursuant to this section may cover relevant hazards and releases notwithstanding that one or more governmental agencies have failed to issue standards or require training concerning the hazards or releases.

c. In workplaces where the primary language of either 10% of all employees or 25 employees is a language other than English, training shall be provided in that language in addition to English.

d. The content, methods, materials distributed to employees, the selection of trainers, and the scheduling of training under this section shall be reviewed by the hazard prevention advocates and approved by the hazard prevention committee. Decisions concerning approval or disapproval by the hazard prevention committee shall be reflected in hazard prevention committee meeting minutes.

e. The department and the Department of Health, within one year of the effective date of this Act, and in consultation with the Department of Labor, shall jointly adopt, pursuant to the "Administrative Procedure Act," rules and regulations establishing minimum requirements for training and for the qualifications of experts to conduct this training. The department shall not adopt any rule or regulation concerning training which is covered by an existing standard adopted by the federal Occupational Safety and Health Administration.

37. (New section) a. The hazard prevention committee shall have the opportunity to employ or contract with and utilize experts who have expertise in hazard prevention, evaluation, or training. These experts may accompany hazard prevention committee members on inspections of facilities. A copy of the report written by an expert must be provided by the hazard prevention committee to the covered owner or operator, the employee representatives, the qualified community organization and to the local emergency planning committee within seven days of its completion. A copy of the report shall be provided by the hazard prevention committee to an employee or to a member of an employee's immediate family, upon request within seven days. A hazard prevention committee may apply for a technical assistance grant pursuant to section 20 of this act.

38. (New section) a. The hazard prevention advocates shall be informed by the covered owner or operator prior to the engagement, transfer or termination of any personnel or outside contractors, whose job duties or organizational functions concern either hazard or release identification, reduction, or prevention at the facility, or health surveillance of, or provision of medical services to, employees of the employer. This subsection shall apply to the following job titles or organizational functions:

(1) industrial hygienists, safety engineers, environmental engineers or other personnel with responsibilities for evaluating,

minimizing or preventing hazards concerning the facility;

(2) physicians with responsibility for providing treatment, including but not limited to examining employees or reviewing employee medical records;

(3) medical clinics which employ doctors, nurses or other persons who evaluate injury or disease resulting from hazards.

b. Hazard prevention advocates shall be afforded the opportunity to participate and ask questions of applicants during employment interviews for the positions specified in subsection b of this section. The covered owner or operator shall provide to hazard prevention advocates the most current resume of any applicant, which shall include, but need not be limited to, the prior work history of any applicant for the positions specified in subsection a of this section at least ten days prior to an employment interview of that applicant.

c. This section shall not apply to persons retained by a covered owner or operator solely for the purpose of assisting it in litigation.

39. (New section) a. A covered owner or operator shall give written notice to each hazard prevention coordinator, and to each qualified community organization, prior to final decision and at least 60 days in advance of introduction, describing potential hazards or releases caused by the reasonably anticipated introduction or alteration of new machinery, equipment, processes or methods, and chemicals, the use, or discontinuance of the use of vendors and subcontractors, and the expansion or contraction of the facility. The written notice shall include an evaluation by the covered owner or operator of hazards anticipated to result from the covered owner or operator's decision; alternatives considered and reasons for utilization or rejection of the alternatives; and methods to be used to prevent or abate potential hazards, including but not limited to additional training . Either hazard prevention coordinator may call a special meeting to further discuss the contents of the notice.

b. A summary of the written notice required by this section shall be prominently posted within the facility for at least ten working days so that it is accessible to all employees, and an employee shall be promptly provided with the full report upon request. In workplaces where the primary language of either 10% of all employees or 25 employees is a language other than English, the covered owner or operator shall post a translation in that language of the summary required by this section and in the manner required by this section.

40. (New section) a. Any hazard prevention advocate or alternate who in good faith believes that any activity, machine, operation, process or release constitutes an imminent hazard may ask the covered owner or operator to promptly eliminate or abate the alleged imminent hazard.

b. If the covered owner or operator fails to promptly abate the

imminent hazard, and the hazard prevention advocate or alternate in good faith believes that there is insufficient time to eliminate the hazard through normal enforcement mechanisms, the hazard prevention advocate or alternate may direct the temporary cessation of the imminently hazardous operation, activity or process in question, and may further direct employees to cease and desist from the operation, activity or process involving the claimed imminent hazard. No hazard prevention advocate or alternate may exercise the right provided by this subsection if doing so creates a more severe imminent hazard.

c. After directing the cessation of an alleged imminently hazardous operation, activity, process or release, a hazard prevention advocate or alternate shall promptly telephone or otherwise advise the nearest office of, as appropriate, the United States Occupational Safety and Health Administration or the United States Environmental Protection Agency, or one of the New Jersey Departments of Labor, Health, Community Affairs, or Environmental Protection, to request an immediate inspection of the claimed imminent hazard.

d. A covered owner or operator shall not permit the operation, activity or process in question to be restarted until the arrival of a governmental agency representative to observe the specific operation, activity, process or release in question. The covered owner or operator may resume or restart the operation, activity, process or release in question if failure to do so would actually pose an immediate, direct and highly substantial threat to human life, or if the hazard prevention advocate or alternate agrees that the imminent hazard has been abated.

e. A covered owner or operator may require any employee who had been working on or near a temporarily ceased operation, activity, process or release to remain at the facility for the remainder of his normal work shift. The employee may be temporarily assigned to other duties with no loss of pay or benefits.

f. Unless prohibited by a governmental inspector, a covered owner or operator may restart or resume the temporarily ceased operation, activity, process or release fifteen minutes following an inspection by, and in the presence of, a governmental inspector.

g. The provisions of this section shall not apply to firefighting and police operations.

41. (New section) The hazard prevention committee shall make decisions by majority vote of those members present and voting. In the event of a tie vote, either hazard prevention coordinator may, within 30 days of the meeting at which the vote was taken, refer the matter in dispute to the hazard prevention arbitration board.

42. (New section) a. There is established within the department the Hazard Prevention Arbitration Board whose

purpose shall be to appiy the principles of arbitration to resolve tie votes among members of hazard prevention committees. An arbitrator shall have no power to determine whether operations, activities, processes or releases constitute a hazard nor shall the arbitrator have power to interpret a collective bargaining agreement. The Hazard Prevention Arbitration Board shall resolve disputes ina a manner consistent with the purposes of this act.

b. Within 180 days of the effective date of this Act, the Governor shall appoint 30 concurrently serving hazard prevention advocates to serve as members of the Hazard Prevention Arbitration Board, who shall act as arbitrators. Any hazard prevention advocate who desires to serve as an arbitrator shall so advise the department. The department may by regulation change the total number of arbitrators. Arbitrators shall serve for two year terms, and shall not be removed prior to the expiration of their term except for cause. Arbitrators may be reappointed for successive terms. At least one half of the members of the Hazard Prevention Arbitration Board shall be employee hazard prevention advocates.

c. Arbitrators shall receive $250 per day or part thereof for service. A covered owner or operator may require an employee serving as an arbitrator to return to the employer the employee's base pay, if less than $250, if the covered owner or operator has paid the base pay to the employee. The department may increase this compensation by regulation.

d. The department shall submit to the hazard prevention coordinators the names of five members of the Hazard Prevention Arbitration Board who have been selected on a random basis and who reside within 50 miles of the facility. Within 10 days each hazard prevention coordinator shall delete up to two of the proposed arbitrators from the list, and from the remaining names the department shall select at random the arbitrator.

e. In addition to all powers normally granted to arbitrators, an arbitrator pursuant to this Act shall have the power to direct that particular actions be taken and to set conditions on activities. An arbitrator shall have no power to order a covered owner or operator to implement hazard elimination or reduction measures including but not limited to ventilation or lighting improvements, chemical substitutions, removal of asbestos and imminent or other hazards, wearing of personal protective equipment, use of water or air pollution control devices, or machine improvements.

f. An arbitrator shall hear a dispute within 30 days of submission and shall issue a decision within 30 days of the hearing. The Department shall cause the decision of the arbitrator to be published, and shall make arbitrator decisions available to the public upon request at a cost not to exceed the cost of printing or duplication.

g. The decision of the arbitrator assigned shall be final and binding, and shall have the same force and effect as an arbitration decision. An action to enforce or vacate the decision may be brought by the covered owner or operator or an employee who, within one year of the date on which the decision was made, is or was employed at the facility.

43. (New section) a. Joint labor-management safety, health or environmental committees created as part of a bona fide collective bargaining agreement, may function as hazard prevention committees if they fulfill or exceed the minimum requirements of this act, and the members of such committees may function as hazard prevention advocates and their chairpersons may function as hazard prevention coordinators. Nothing in this act shall be interpreted as lessening or eliminating the hazard prevention or related provisions, or past practices, of a bona fide collective bargaining agreement nor shall this act be interpreted to prevent any labor-management agreements or practices that provide additional or more comprehensive hazard prevention protections.

b. Nothing in this act shall be interpreted to authorize the Hazard Prevention Arbitration Board or any other agency or court to interpret the terms or meaning of a particular collective bargaining agreement.

44. (New section) The provisions of any other law to the contrary notwithstanding, no person shall be liable in any way for damages or equitable restitution arising from any action taken or not taken in the persons's capacity as a hazard prevention advocate or coordinator or as a member of a local emergency planning committee or a qualified community organization. The provisions of this section shall not be construed to exempt owners or operators from any liability for claims for which they are liable under this act or any other act. Except as specifically provided in this act, nothing in this act shall be construed to alter existing State law concerning liabilities of any kind.

45. (New section) a. No hazard prevention advocate or any other employee shall lose any pay, benefits, accrual of seniority or vacation time for exercising any rights afforded by this act or for participating in any meetings, training programs, inspections, accompaniment of any inspector, investigations, or other activities authorized or undertaken pursuant to the employee's good faith belief that such activities are authorized pursuant to this act. No person shall discharge, cause to be discharged, suspend, demote or otherwise discipline, penalize, discriminate, or take other adverse action, or cause adverse action to be taken, against an employee because the employee, or designee or employee representative, has acted pursuant to the employee's good faith belief as to the requirements or rights under this act. Discharge shall be considered irreparable harm for purposes of considering injunctive relief. If an employee's belief as to the

rights or requirements of this Act is found to be unreasonable, the maximum disciplinary action that may be taken shall be suspension without pay for five days; except that if an employee's belief, as to the rights or requirements of this act, is found to be unreasonable and the exercise of the rights have resulted in a cessation of work, then the maximum disciplinary action that may be taken against an employee shall be suspension without pay for 30 days for a second incident within three years, and shall be discharge for a third incident within three years.

b. Any waiver by a person of the benefits or requirements of this act shall be void. Any person who requires that another person waive any rights established pursuant to this act shall, upon conviction, be guilty of a crime of the fourth degree.

46. (New section) a. In addition to any other remedy provided by this act, or any other law, any employee who believes he has had adverse employment action taken against him by his employer for acting pursuant to the employee's good faith belief as to the requirements or rights under this Act may, within two years of obtaining knowledge of the adverse actions and the reasons therefor, file a complaint with the Department of Labor or with the Superior Court.

b. Within 30 days of its receipt of a complaint, the Department of Labor shall commence an investigation of the complaint which shall be completed within 90 days of receipt.

c. If, upon completion of the investigation, the Department of Labor determines that there is probable cause to believe that the complaint is valid in whole or in part, it shall refer the complaint to the Office of Administrative Law.

d. Within 60 days of the referral, the Office of Administrative Law shall commence an adjudicatory hearing on those portions of the complaint for which there was found to be probable cause. The hearing shall be conducted as a contested case pursuant to the "Administrative Procedure Act," P.L. 1968, c.410 (C.52:14B-1 et seq.), and P.L. 1978, c.67 (C.52:14F-1, et. seq.) brought in the name of the Commissioner of the Department of Labor. The employee and the employee's representative shall be permitted to intervene upon request.

e. If evidence is introduced before a court or before an administrative law judge that tends to show that, prior to the adverse action, the employee exercised any right provided or took any action required by this act, the respondent shall be presumed to have taken the adverse action in violation of this section. The respondent may overcome this presumption upon demonstrating by clear and convincing evidence that the adverse action was taken for just cause not related to this act.

f. Within 30 days of the receipt of the recommendations of the administrative law judge, the Commissioner of the Department of Labor shall adopt, reject, or modify the recommendations. The decision of the Commissioner of the Department of Labor shall

be considered the final agency action on the matter and shall be subject only to review by a court of competent jurisdiction.

g. Nothing in this section shall be deemed to diminish the rights of any employee under any statute, common law, rule, or regulation, or under any collective bargaining agreement.

47. (New section) The Department of Labor or an employee may apply to the Superior Court for appropriate injunctive relief to restrain violations of section 46 of this act. The court may order any appropriate relief, including rehiring or reinstatement of the employee to his former position with back pay, benefits, and accrual of seniority. In any action in which the Commissioner of Labor or an employee is the prevailing or substantially prevailing party, the court shall award the Commissioner of Labor or the employee costs of litigation.

48. (New section) a. Whenever the Commissioner finds that an owner or operator of a facility has violated any provision of this act or any rule or regulation adopted pursuant to this act, he may:

(1) Issue an order requiring the owner or operator found to be in violation to comply in accordance with subsection b. of this section;

(2) Bring a civil action in accordance with subsection c. of this section;

(3) Levy a civil administrative penalty in accordance with subsection d. of this section; or

(4) Bring an action for a civil penalty in accordance with subsection e. of this section.

b. Whenever the commissioner finds that an owner or operator of a facility has violated any provision of this act or any rule or regulation adopted pursuant to this act, he may issue an order specifying the provision or provisions of this act or the rule or regulation of which the owner or operator is in violation, citing the action which constituted the violation, ordering abatement of the violation, and giving notice to the owner or operator of his right to a hearing on the matters contained in the order. The ordered party shall have 20 calender days from receipt of the order within which to deliver to the commissioner a written request for a hearing. This order shall be effective upon receipt and any person to whom such order is directed shall comply with the order immediately. A request for hearing shall not automatically stay the effect of the order.

c. The commissioner may institute an action or proceeding in the Superior Court for injunctive and other relief, for any violation of this act, or of any rule or regulation adopted pursuant to this act or order issued pursuant to this act and said court may proceed in the action in a summary manner. In any such proceeding the court may grant temporary or interlocutory relief. Such relief may include, singly or in combination:

(1) A temporary or permanent injunction;

(2) Assessment of the violator for the costs of any investigation and for the cost of litigation;

(3) Assessment of the violator for any cost incurred by the State in removing, correcting or terminating any adverse effects resulting from any violation of any provision of this act or any rule, regulation or condition of approval for which the action under this subsection may have been brought;

(4) Assessment against the violator of compensatory damages for any actual damages caused by any violation of this act or any rule or regulation adopted pursuant to this act for which the action under this subsection may have been brought. Assessments under this subsection shall be paid to the State Treasurer, except that compensatory damages may be paid by specific order of the court to any persons who have been aggrieved by the violation.

d. The commissioner is authorized to assess a civil administrative penalty of not more than $2,500.00 for each violation provided that each day during which the violation continues shall constitute an additional, separate and distinct offense. No assessment shall be levied pursuant to this section until after the violator has been notified by certified mail or personal service. The notice shall include a reference to the section of this act or rule or regulation adopted pursuant to this act violated, a concise statement of the facts alleged to constitute a violation, a statement of the amount of the civil administrative penalties to be imposed, and a statement of the party's right to a hearing. The ordered party shall have 20 calendar days from receipt of the notice within which to deliver to the commissioner a written request for a hearing. After the hearing and upon finding that a violation has occurred, the commissioner may issue a final order after assessing the amount of the fine specified in the notice. If no hearing is requested, the notice shall become a final order after the expiration of the 20-day period. Payment of the assessment is due when a final order is issued or the notice becomes a final order. The authority to levy a civil administrative penalty is in addition to all other enforcement provisions provided in this act, and the payment of any assessment shall not be deemed to affect the availability of any other enforcement provisions in connection with the violation for which the assessment is levied. The department may compromise any civil administrative penalty assessed under this section in an amount the department determines appropriate.

e. Any owner or operator of a facility who violates the provisions of this act or any code, rule or regulation promulgated pursuant to this act shall be liable to a penalty of not more than $4,000.00 per day, to be collected in a civil action commenced by the department.

Any owner or operator of a facility who violates an administrative order issued pursuant to subsection b. of this section, or a court order issued pursuant to subsection c. of this

section, or who fails to pay an administrative assessment in full pursuant to subsection d. of this section is subject upon order of a court to a civil penalty not to exceed $10,000.00 per day of such violations.

Any penalty imposed pursuant to this subsection may be collected with costs in a summary proceeding pursuant to "the penalty enforcement law" (N.J.S. 2A:58-1 et seq.). The Superior Court and the municipal court shall have jurisdiction to enforce the provisions of "the penalty enforcement law" in connection with this act.

f. Pursuit of any remedy specified in this section shall not preclude the pursuit of any other remedy provided by any other law. Administrative and judicial remedies provided in this section may be pursued simultaneously.

49. (New section) a. In addition to any other remedy provided by this act or any other act, any person alleging a violation of any provision of this act , or any rule or regulation adopted pursuant thereto, may bring an action against an owner or operator for enforcement or to restrain a violation in the Superior Court.

b. A person who has been injured by the failure of an owner or operator of a facility to comply with the provisions of this act, or any rule or regulation adopted pursuant thereto, may recover damages.

c. Any action brought pursuant to this act against an owner or operator for personal injury or property damage may be tried by jury.

d. If a factfonder finds that a violation of this act is outrageous, the factfinder may award punitive damages.

e. In an action in which the person suing either to enforce this act or restrain a violation this act is the prevailing or substantially prevailing party, the Court shall award costs of litigation.

50. Section 3 of P.L. 1974, c. 80 (C. 34:1B-3) is amended to read as follows:

3. As used in this act, unless a different meaning clearly appears from the context:

a. "Authority" means the New Jersey Economic Development Authority, created by section 4 of this act.

b. "Bonds" means bonds or other obligations issued by the Authority pursuant to this act.

c. "Cost" means the cost of the acquisition, construction, reconstruction, repair, alteration, improvement and extension of any building, structure, facility including water transmission facilities, or other improvement; the cost of machinery and equipment; the cost of acquisition, construction, reconstruction, repair, alteration, improvement and extension of energy saving improvements or pollution control devices, equipment or facilities; the cost of lands, rights-in-lands, easements, privileges, agreements, franchises, utility extensions, disposal

facilities, access roads and site development deemed by the authority to be necessary or useful and convenient for any project or in connection therewith; discount on bonds; cost of issuance of bonds; engineering and inspection costs; costs of financial, legal, professional and other estimates and advice; organization, administrative, insurance, operating and other expenses of the authority or any person prior to and during any acquisition or construction, and all such expenses as may be necessary or incident to the financing, acquisition, construction or completion of any project or part thereof, and also such provision for reserves for payment or security of principal of or interest on bonds during or after such acquisition or construction as the authority may determine.

d. "County" means any county of any class.

e. "Development property" means any real or personal property, interest therein, improvements thereon, appurtenances thereto and air or other rights in connection therewith, including land, buildings, plants, structures, systems, works, machinery and equipment acquired or to be acquired by purchase, gift or otherwise by the authority within an urban growth zone.

f. "Person" means any person, including individuals, firms, partnerships, associations, societies, trusts, public or private corporations, or other legal entities, including public or governmental bodies, as well as natural persons. "Person" shall include the plural as well as the singular.

g. "Pollution control project" means any device, equipment, improvement, structure or facility, or any land and any building, structure, facility or other improvement thereon, or any combination thereof, whether or not in existence or under construction, or the refinancing thereof in order to facilitate improvements or additions thereto or upgrading thereof, and all real and personal property deemed necessary thereto, having to do with or the end purpose of which is the control, abatement or prevention of land, sewer, water, air, noise or general environmental pollution, including, but not limited to, any air pollution control facility, noise abatement facility, water management facility, thermal pollution control facility, radiation contamination control facility, wastewater collection system, wastewater treatment works, sewage treatment works system, sewage treatment system or solid waste disposal facility or site; provided that the authority shall have received from the Commissioner of the State Department of Environmental Protection or his duly authorized representative a certificate stating the opinion that, based upon information, facts and circumstances available to the State Department of Environmental Protection and any other pertinent data, (1) said pollution control facilities do not conflict with, overlap or duplicate any other planned or existing pollution control facilities undertaken or planned by another public agency or authority

within any political subdivision, and (2) that such facilities, as designed, will be a pollution control project as defined in this act and are in furtherance of the purpose of abating or controlling pollution.

h. "Project" means: (1)(a) acquisition, construction, reconstruction, repair, alteration, improvement and extension of any building, structure, facility, including water transmission facilities or other improvement, whether or not in existence or under construction, (b) purchase and installation of equipment and machinery, (c) acquisition and improvement of real estate and the extension or provision of utilities, access roads and other appurtenant facilities; and (2)(a) the acquisition, financing, or refinancing of inventory, raw materials, supplies, work in process, or stock in trade, or (b) the financing, refinancing or consolidation of secured or unsecured debt, borrowings, or obligations, or (c) the provision of financing for any other expense incurred in the ordinary course of business; all of which are to be used or occupied by any person in any enterprise promoting employment, either for the manufacturing, processing or assembly of materials or products, or for research or office purposes, including, but not limited to, medical and other professional facilities, or for industrial, recreational, hotel or motel facilities, public utility and warehousing, or for commercial and service purposes, including, but not limited to, retail outlets, retail shopping centers, restaurant and retail food outlets, and any and all other employment promoting enterprises, including, but not limited to, motion picture and television studios and facilities and commercial fishing facilities, commercial facilities for recreational fishermen, fishing vessels, aquaculture facilities and marketing facilities for fish and fish products and (d) acquisition of an equity interest in, including capital stock of, any corporation; or any combination of the above, which the authority determines will: (i) tend to maintain or provide gainful employment opportunities within and for the people of the State, or (ii) aid, assist and encourage the economic development or redevelopment of any political subdivision of the State, or (iii) maintain or increase the tax base of the State or of any political subdivision of the State, or (iv) maintain or diversify and expand employment promoting enterprises within the State; [and] (3) the cost of acquisition, construction, reconstruction, repair, alteration, improvement and extension of an energy saving improvement or pollution control project which the authority determines will tend to reduce the consumption in a building devoted to industrial or commercial purposes, or in an office building, of nonrenewable sources of energy or to reduce, abate or prevent environmental pollution within the State ; and (4) the cost of acquisition, construction, reconstruction, repair alteration, improvement or extension of a facility hazard abatement project . Project may also include: (i) reimbursement

to any person for costs in connection with any project, or the refinancing of any project or portion thereof, if determined by the authority as necessary and in the public interest to maintain employment and the tax base of any political subdivision and will facilitate improvements thereto or the completion thereof, and (ii) development property and any construction, reconstruction, improvement, alteration, equipment or maintenance or repair, or planning and designing in connection therewith.

i. "Revenues" means receipts, fees, rentals or other payments to be received on account of lease, mortgage, conditional sale, or sale, and payments and any other income derived from the lease, sale or other disposition of a project, moneys in such reserve and insurance funds or accounts or other funds and accounts, and income from the investment thereof, established in connection with the issuance of bonds or notes for a project or projects, and fees, charges or other moneys to be received by the authority in respect of projects and contracts with persons.

j. "Resolution" means any resolution adopted or trust agreement executed by the authority, pursuant to which bonds of the authority are authorized to be issued.

k. "Energy saving improvement" means the construction, purchase and installation in a building devoted to industrial or commercial purposes of any of the following, designed to reduce the amount of energy from nonrenewable sources needed for heating and cooling that building: insulation, replacement burners, replacement high efficiency heating and air conditioning units, including modular boilers and furnaces, water heaters, central air conditioners with or without heat recovery to make hot water for industrial or commercial purposes or in office buildings, and any solar heating or cooling system improvement, including any system which captures solar radiation to heat a fluid which passes over or through the collector element of that system and then transfers that fluid to a point within the system where the heat is withdrawn from the fluid for direct usage or storage. These systems shall include, but not necessarily be limited to, systems incorporating flat plate, evacuated tube or focusing solar collectors.

The foregoing list shall not be construed to be exhaustive, and shall not serve to exclude other improvements consistent with the legislative intent of this amendatory act.

l. "Urban growth zone" means any area within a municipality receiving State aid pursuant to the provisions of P.L.1971, c. 64, or a municipality certified by the Commissioner of Community Affairs to qualify under such law in every respect except population, which area has been so designated pursuant to an ordinance of the governing body of such municipality.

m. "Facility hazard abatement project" means any device, equipment, improvement, structure, or system constructed or installed at an industrial or commercial facility the purpose of

which is to prevent, eliminate, or abate a hazard or release.

n. "Hazard" means any agent or condition or combination of agents and conditions that present an actual or potential adverse impact to human health, public safety or the environment.

o. "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of any hazard into the environment.

(cf: P.L.1983, c.282, s 2)

51. Section 6 of P.L.1974, c.80 (C.34:1B-6) is amended to read as follows:

6. A copy of any application for assistance under this act received by the authority shall be submitted to, and for the review and advice of, the Director of the Division of Economic Development. Prior to making any commitment for such assistance, the authority, after consultation with the director of said division, shall, by resolution duly adopted, find and determine, on the basis of all information reasonably available to it, that such assistance will tend to maintain or provide gainful employment for the inhabitants of the State, or will reduce the consumption, in a building devoted to industrial or commercial purposes, or in an office building, of nonrenewable sources of energy, or will eliminate and reduce environmental pollution derived from the operation of industry, utilities and commerce, or will prevent, eliminate or abate hazards or releases, and improve living conditions, and shall serve a public purpose by contributing to the prosperity, health and general welfare of the inhabitants of the State, and will tend to aid and assist in the economic growth, development or redevelopment of the political subdivision wherein it is to be located, and such finding and determination shall be conclusive for all purposes of this act.

The authority shall also find and determine, on the basis of all information reasonably available to it, that such assistance, or any part thereof, used to construct, improve or refinance any pollution control facility as defined by this act will not impair any obligation undertaken by any County Industrial Pollution Control Financing Authority created pursuant to P.L.1973, c. 376 (C.40:37C-1 et seq.).

(cf: P.L.1983, c.282, s.4)

52. (New section) If any section, subsection, provision, clause, or portion of this act is found unconstitutional by a court of competent jurisdiction, the remainder of this act shall not be affected thereby.

53. (New section) There is established in the Department of Environmental Protection a special non-lapsing fund to be known as the "Hazard Elimination Fund." The "Hazard Elimination Fund" shall be credited with all fines and penalties imposed and collected pursuant to section 49 of this act, and all monies deposied in the fund shall be appropriated solely for the implementation and enforcement of the provisions of this act.

54. a. There is appropriated from the General Fund to the Department of Environmental Protection the sum of $1,315,000.00 to implement the provisions of this act. Of this amount the department shall allocate $200,000 each year for making technical assistance grants pursuant to section 20 of this act.

b. There is appropriated from the General Fund to the Department of Health the sum of $65,000.00 to implement the provisions of this Act.

c. There is appropriated from the General Fund to the Department of Labor the sum of $65,000.00 to implement the provisions of this act.

d. There is appropriated from the General Fund to the Department of Law and Public Safety the sum of $70,000.00 to implement the provisions of this Act.

55. This act shall take effect 180 days after enactment, except that the the Department of Environmental Protection, the Department of Health, the Department of Labor, and the Department of Law and Public Safety shall take any actions necessary between the enactment of this act and its effective date to insure the implementation of this act on its effective date.

STATEMENT

This bill would establish a comprehensive system designed to authorize local community groups and facility-based groups to conduct cooperative environmental and public health-oriented inspections of facilities where hazards may be present or may be released into the environment. The intent of this bill is to encourage New Jersey residents to participate, under clearly defined procedures, in the inspection and monitoring of such facilities, in order to augment the environmental and public health regulation of these facilities now conducted by governmental agencies. In addition, this bill is designed to aid in identifying and addressing environmental or public health problems originating at these facilities before they present a serious threat to the environment or the public health. This bill would not, however, increase the number of State environmental inspectors, establish new legal standards for hazardous exposures, or require owners or operators of facilities to abate specific hazards, except in certain emergency situations.

This bill would authorize the formation of three distinct types of inspection and monitoring groups, each with functions reflecting the needs of its membership: local emergency planning committees (LEPCs), qualified community organizations (QCOs) and hazard prevention committees (HPCs). In general this bill would apply to facilities in the manufacturing sector, as well as

in the following sectors: transportation; telephone communications; electric, gas, and sanitary services; chemical, petroleum and paint wholesalers; scrap and waste dealers; hotels; dry cleaning plants; hospitals and other health care facilities; medical and research laboratories; and state and local governments (excluding schools boards).

This bill would statutorily authorize the formation of a local emergency planning committtee (LEPC) in each municipality in the state. (Such committees were mandated pursuant to Title III of the "Superfund Amendments and Reauthorization Act of 1986," (SARA)(42 U.S.C. 11001 et seq.), and were authorized by Executive Order 161 of 1987.) An LEPC would be composed of an equal number of government officials and public members. Contiguous municipalities could agree to form joint LEPCs. Government members of an LEPC would include a representative of the local police, fire, health, or road and public works departments, the planning board, environmental commission, emergency management agency, and an elected official. The public members of an LEPC, to be appointed by the highest elected official of the municpality, would be drawn from a broad range of groups and interests. Owners of industrial facilities required under SARA to report information concerning discharges of hazardous substances into the environment would be required to submit emergency response plans and related documents to the LEPC, and the LEPC would be authorized to conduct enviornmental inspections of these facilities. This bill would also authorize municipalities to adopt ordinances imposing fees on owners or operators of facilities to enable local emergency planning committees to fund inspections of these facilities.

This bill would also authorize the establishment of qualified community organizations, which would be organized for the purpose of inspecting and monitoring environmental-related activities at specific facilities, and which would be composed of citizens living or working in the municipality in which the facility is located or within five miles of a specific facility. The establishment and activities of qualified community organizations would be governed by regulations adopted by the Department of Environmental Protection. Qualified community organizations would be authorized to inspect a facility up to four times per year, using an inspection team composed of up to six members of the qualified community organization and up to two technical experts. The inspections teams would be authorized to have full access to the facility, and would also be authorized to conduct non-intrusive environmental testing and sampling. Owners of facilities would be required to notify a qualified community organization of an unusual hazardous release, after which the qualified community organization would be authorized to inspect the facility once a month for a period of six months. This bill also establishes a grant program in the Department of

Environmental Protection to provide a qualified community organization with grants to hire experts to assist in facility inspections. This bill would encourage, but not require, agreements between owners or operators of facilities and qualified community organizations.

This bill also requires owners of facilities employing 20 or more employees to provide for the selection of a group of hazard prevention advocates at the facility, composed of an equal number of persons selected by the owner of the facility and by the employees at the facility. The number of hazard prevention advocates at each facility would be based on the number of employees at the facility. Hazard prevention advocates would be authorized to form a hazard prevention committee for the facility. Hazard prevention advocates would be trained and authorized to conduct inspections at the facility and to investigate releases into the environment. Hazard prevention advocates would be authorized, under a procedure established in this bill, to direct the owner or operator of a facility to temporarily cease or abate any condition or process at the facility constituting an imminent hazard to workers or the public health or environment, pending inventigation by a governmental agency. Existing joint labor-management safety, health, or environmental committees may function as hazard prevention committees if these committees meet or exceed the minimum requirements of this bill.

This bill also authorizes the New Jersey Economic Development Authority to finance the cost of projects designed to abate environmental hazards at facilities.

Finally, this bill would appropriate to the Department of Environmental Protection $1,310,000 ($200,000 of which is to be used for technical assistance grants to qualified community organizations and hazard prevention committees); $65,000 to the Department of Health; $65,000 to the Department of Labor; and $70,000 to the Department of Law and Public Safety to implement their respective responsibilities pursuant to this bill.

ENVIRONMENT

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ASSEMBLYMAN ROBERT G. SMITH (Co-Chairman): Will everyone please take a seat? There are plenty of seats interspersed through the front end of the auditorium. This isn't church; you don't have to stand in the back.

All right, if I may have everyone's attention-- My name is Bob Smith. I am Chairman of the Assembly Energy and Environment Committee. You are present at a joint public hearing of the Senate Environmental Quality Committee and the Assembly Energy and Environment Committee. We are going to be hearing testimony today on a bill entitled, "New Jersey Hazard Elimination Through Local Participation Act," -- HELP.

If I might, prior to starting the hearing, I would like to lay down a few ground rules, so we can do this in an efficient and effective manner. First, if anyone feels the need to discuss either what is being said or some other problem you may have, we would appreciate it if you would do so in the corridor outside of this room. It is obvious that the interest in the bill has generated the presence of several hundred people here today. We really want to have one conversation; that conversation being the witnesses and the public record -- the witnesses and the Committee members. So, if you have any other discussions you would like to carry on, please do so outside.

Secondly, there is coffee out in the corridor, and everyone is welcome to a cup of coffee.

In addition to that, I think we have a list of most of the people who wish to speak, but in the event that we don't have your name, and you desire to testify today, there are these tiny slips of paper which ask that you identify your name and your organizational representation, and the position you fill, and whether or not you wish to speak. So, if you want to speak today, please fill out one of those forms, and leave it at that table with staff.

Before we have any introductory remarks, I would like to introduce to you the members of the Committee who are present: First, from the New Jersey State Senate, the Honorable Senator Paul Contillo over here -- if you will raise your hand, Paul, so everyone will know who you are. On this side we have Assemblyman Arthur Albohn; Assemblyman Neil Cohen; and we expect, very shortly, to be joined by several other members of the Senate and Assembly. When they come in, I will be introducing them to you.

By way of putting the bill in some perspective, you are going to hear remarks from two legislators, namely myself, with a brief introductory comment, and Senator Gabriel Ambrosio, who is with us, who is the Senate sponsor of the bill. We are then going to have our testimony presented as follows: Roughly 45 minutes to an hour of testimony from the proponents of the legislation, and 45 minutes to an hour of testimony from those in opposition to the legislation. After that, we will then have proponent, opponent, in alternating order.

The reason for this approach to the legislation is that the bill is very complicated, and rather than have five minutes from each side, and the bill being less understood by everyone in the room, both proponents and opponents agreed that the best way to handle this was to have a block of time up-front for each side to discuss their respective positions in an organized and logical sequence.

So with that in mind-- By the way, we also have over 40 persons registered who are ready to testify on this bill. We are asking that you try to summarize your testimony; that any written statements you have, you bring to the staff so they will be part of the public record. But also be advised that the public record on this legislation will be open for the next 30 days, so that anyone who wants to add follow-up testimony, follow-up comments, or substantiating evidence, both Committees

would be most happy to receive them and make them part of the public record for the next 30 days.

With those preliminary comments in mind, let me make a brief statement, and then ask Senator Ambrosio to make a statement as well.

During the 1970s, the United States Congress adopted various measures to regulate, reduce, and eliminate altogether releases of toxic pollutants into the air, water, and land. Despite this national commitment and the earnest regulatory efforts of New Jersey and other states, the 1987 Federal Right to Know data showed that some 18 billion pounds -- 18 billion pounds -- of 328 toxic chemicals were released in 1987 into our air, lands, and waters of the United States. And another 4.6 billion pounds were transferred to off-site facilities for treatment or disposal. The amount of toxic chemicals released or transferred to off-site facilities in New Jersey was some 308 million pounds.

Whatever the limitations or qualification of these numbers, their sheer magnitude is alarming, made doubly so by the fact that the numbers measure only part of the universe of toxic chemicals released to the environment. For example, the reported releases were limited in the first year to facilities that produced, imported, or processed 75,000 or more pounds, or used 10,000 pounds or more annually of reportable chemicals. Therefore, a relatively small population are reported, or many are uncovered.

Ample documentation exists as to the pernicious environmental effects of such huge quantities of toxic and other pollutants on the air, waters, and land of New Jersey and the nation. One indication of the extent of environmental degradation is that the nation could possibly end up spending, according to some estimates, in excess of $1 trillion on just the cleanup of sites on the current Superfund Site List and, of course, Superfund site cleanups are only the visible part of the toxic iceberg, though no less pernicious.

The impacts of toxic releases on human health are more difficult to quantify. One recent effort to measure health impacts is the Occupational Disease Study conducted by the Department of Community Medicine of the Mount Sinai School of Medicine, which is affiliated with the City University of New York, commissioned by the New Jersey Department of Health. The Mount Sinai Study focused on occupational health problems in the hazardous industry workplace. The study estimated that a minimum of between 2170 and 2870 deaths result each year in New Jersey from occupational diseases, including occupational cancers, dust diseases of the lungs, cardiovascular diseases, chronic respiratory diseases, and neurologic disorders.

It was also estimated that 7317 to 14,776 of new cases of such occupational diseases develop each year in New Jersey as a result of work-related exposures. The Mount Sinai Study also noted the pervasiveness of workplace environmental hazards, as illustrated by workplace exposures to two well recognized and commonly occurring hazards, lead and sand. Using OSHA inspection data for high risk New Jersey facilities in the period 1980 through '85, the Mount Sinai Study concluded that exposure levels for silica and lead were routinely exceeded in the sample facilities by a range of 30% to 50%.

The Mount Sinai Study has rendered a singular public service. It reminds us of the inextricable links between workplace environmental hazards and the community environmental hazards. Workplace exposures invariably become community exposures, in a somewhat less acute form.

The bill before us today -- the New Jersey Hazard Elimination Through Local Participation Act -- represents an amalgam of the spirit and letter of the Federal Emergency Planning and Community Right to Know Act of 1986, and the Mount Sinai Report recommendation that joint management/labor committees be empowered to maintain a safe workplace. This bill is also a logical extension of New Jersey's Worker and

Community Right to Know Act and the Toxic Catastrophe Prevention Act, which have established a public policy principle that community residents in this State have a legitimate and vital interest in the safe production, use, or storage of hazardous substances in facilities located within their communities, as do facility workers, who must bear the brunt of any accidental or other releases of hazardous substances.

This bill may, therefore, be divided into two parts: The first part fleshes out the organization, functions, and duties of local emergency planning committees created by the Federal Community Right to Know and Act Law of 1986. The Community Right to Know part also provides a mechanism by which community organizations may be empowered to conduct inspections, prepare reports, and consult with plant management on hazardous conditions and incidents in facilities within their neighborhoods.

The second part of the bill creates labor/management committees within designated workplaces employing 20 or more workers. These committees afford labor an opportunity to participate on an equal footing with management in identifying and preventing hazards in the workplace, thereby reducing, as well, the dangers to host communities. Labor/management committees are, therefore, at once, the community's front line of defense against hazardous substance releases to the environment.

The New Jersey Hazard Elimination Through Local Participation Act is in keeping with the continuing evolution of environmental and public laws in this State, but it is also a radical departure, in the sense that it proposes to supplement existing regulatory efforts by the active engagement of communities and work management groups in protecting public health and safety. By its emphasis on preventing releases, rather than dealing with the consequences of the releases after

the fact, it is, perhaps, a major improvement in environmental health in our State.

That is as short as I could make that statement, believe it or not. At this time I would like to introduce to you the Senate sponsor of the Hazard Elimination Through Local Participation Act, the Honorable Senator Gabriel Ambrosio. Senator, would you please approach the microphone?

S E N A T O R G A B R I E L M. A M B R O S I O: Thank you, Mr. Chairman. I don't think this mike is working, but-- Any time I can take a microphone away from Senator Contillo, I am always happy to do so. (Senator Ambrosio moves microphone so he can be heard)

Thank you, Mr. Chairman. In view of the fact that you have so many people signed up to testify, both for and against this bill, I am going to be very brief. I have a written statement which I will submit to the Committee, but which I will not read. I don't want to reiterate your very appropriate statement, so I am going to try to pick up on some of the items that I think should be emphasized.

I first would like to acknowledge both your leadership, Assemblyman Smith, and the leadership of the New Jersey Right to Know--

ASSEMBLYMAN SMITH: Right to Know and Act Coalition.

SENATOR AMBROSIO: --and Act Coalition. I always want to put the Act and the Know backwards. But, there has been a great group of people who have been working with you and I for the past year or so in trying to put this legislation together.

I know you are going to hear testimony both pro and con on this bill. I would like to just put in perspective my understanding of where we are and where we're going. I think this is a very important piece of legislation, and I fully expect it to be signed into law. I am looking forward to the dialogue that is going to be heard today before you, both for and against this bill, so that this Committee can appropriately

assess the impact of this bill, and probably make the appropriate changes and come up with a bill that we can all point to with pride as a solution to a very serious problem.

I wish to emphasize that this bill makes no new changes in the law -- the substantive law -- with regard to standards that the business and industry in this State, and other workplace activities, have to comply with. What this bill does do is set in place a new mechanism to see to it that the laws that are already on the books are properly enforced. I think that is a very important point. I know there has been a great deal of concern on the part of the business community as to the impact that this bill will have, and I am sure that this Committee will address those concerns and will give a full airing to the concerns that are being expressed.

However, I would ask this Committee to recognize that the spirit of this law is that we are all in this together, whether you are an employer or an employee; whether you are a legislator or those who are governed. We live on this very, very small planet, a very small part of this planet, and no one is exempt from the activities of anyone else. The workplace does not end at the border of the workplace. The people living outside the fence are also interested and have a right to know what goes on in that workplace. More importantly, they have a right to know what impact that activity is going to have on their lives.

So what this legislation attempts to do is take the next logical step from the right to know, recognizing that the right to know without having the right to act is a meaningless right. If we all approach this bill in the appropriate spirit, as looking to make a better, safer workplace for all of us, I think business, industry, and the worker, as well as the neighbor outside the workplace, are all going to benefit.

I look forward to the testimony, and look forward to working with you and the Committee in seeing this bill move forward. Thank you.

ASSEMBLYMAN SMITH: And thank you, Senator, for your leadership on this very important issue.

At this time, we will allow the proponents of the legislation approximately 45 minutes to an hour to present their case, after which the opponents will be allowed 45 minutes to an hour to present their case.

At this time, I would like to ask Jane Nogaki, Co-Chair of the New Jersey Right to Know and Act Coalition, to come forward. Jane, are you present?

J A N E N O G A K I: (speaking from audience) I'm here.

ASSEMBLYMAN SMITH: Good.

MS. NOGAKI: May I bring someone up with me?

ASSEMBLYMAN SMITH: Yes. In fact, the whole group is welcome to come up.

MS. NOGAKI: Here are 15 copies of my statement.

Good afternoon. Which of these mikes is live?

ASSEMBLYMAN SMITH: They both are. One is for the recorder, and one is for amplification for the room.

MS. NOGAKI: My name is Jane Nogaki, and I am Co-Chairman of the Right to Know and Act Coalition. I want to thank the Joint Senate and Assembly Environment Committees for holding this public hearing on the HELP legislation.

The Right to Know and Act Coalition is in strong support of S-2058 and A-2832 -- the Hazard Elimination Through Local Participation bill. My part of the testimony will deal with the role of community inspections in the hazard elimination process, how effective they can be, how cost-efficient, and why the community right to inspect and negotiate needs to be established by this law.

What is a community inspection, and why? It is based on the three rights model of citizen participation; that is, the right to know, the right to inspect, and the right to negotiate. This model was developed about 10 years ago by the National Toxics Campaign, and using it, citizens have conducted

dozens of neighborhood inspections of local facilities across the country, from the Chevron plant in Richmond, California to Lewcott Chemical Corporation in Massachusetts.

Citizens now have the right to know under law, but there is presently no right to take action on the information. The community inspection operates on the principle that when neighbors are worried about the health and safety impacts of a local industry on their children and property, they should have the ability to know the full extent of the hazard; they should be able to inspect the facility, taking along a technical expert; and they should be able to sit down and talk with workers and management about how those hazards can be eliminated, or at least reduced. This is democrary at its best.

The process avoids confrontations at the plant gate and moves the discussion into the facility itself, where the decisions are made, and where processes begin. It moves the point of intervention inside the plant, instead of outside. The odors, emissions, and toxic releases that neighbors worry about begin inside the plant, and that's where the discussions, recommendations, and decisions need to happen. Since neighbors are the involuntary recipients of toxic air emissions, water emissions, and the unwitting victims of accidental releases, explosions, or fires, at the very least they should have the right to see what those processes are that are exposing them, make objective recommendations for hazard reduction using an independent technical expert such as an industrial hygienist or environmental engineer, and get a response from the company addressing these recommendations.

This approach uses common sense, not regulations, not forms, and not fines. It is hands on, from the bottom up, with the people who are most concerned and most affected sitting down face to face and hammering out workable prevention solutions. It is an approach that investigates what could happen, and then sets out a process for preventing that

disaster, odor, fire, etc. before it happens. As Jerry Poje of the National Wildlife Federation has said -- and Jerry will be testifying later -- "You can prepare for hurricanes; you can prepare for earthquakes; but you can prevent industrial accidents like Bhopals and Chernobyl." Think of the savings to the company if just one fire is prevented; if just one industrial process accident is prevented; if just one lawsuit from an irate neighbor is avoided.

If the Berlin Wall can come down, if Nelson Mandela can be freed from prison, and if a dissident playwright can become President of Poland, then there is hope for us that the factory gates of America will open up to let the neighbors in.

In fact, some companies have started to do this already. Some leaders in the industry, such as Monsanto Corporation, are opening their doors voluntarily. They have adopted a pledge which states-- I am going to quote now from the Monsanto pledge, and when I am finished all of industry is going to rise up on my right and recite the pledge. The pledge is:

"to reduce all toxics and hazardous releases and emissions, working toward an ultimate goal of zero effect;

"to ensure that no Monsanto operation poses any undue risk to our employees and our communities;

"to keep our plants open to our communities and involve the community in plant operations."

The Chemical Manufacturers Association recommends to its members that they provide plant tours to neighbors, and it published an article about the Dynasil community inspection, which was conducted by a community group in my neighborhood, in its newsletter as a model for industry/community cooperation. Included in my testimony is a copy of Monsanto's pledge, and a listing of companies that have allowed plant tours. Wynne Falkowski will be testifying in a few minutes about the very successful Dynasil inspection, which happened in Berlin, New Jersey.

Additionally, the Chemical Manufacturers Association has initiated a program called "Responsible Care," to communicate to the public good management efforts to reduce environmental impacts. Setting up community advisory panels is suggested as a way to outreach to the community.

However, there is a concern on the part of citizens' groups that industries may try to control or dominate local outreach committees by using them for public relations, rather than for real dialogue. Note the statement included in my testimony about the Chemical Manufacturers Association "operating" local community advisory panels. While the objectives of the program are laudable, the top-down approach will not work unless citizens have some equality and some power in the process, not to mandate improvements, but at least to recommend them based on verified experience and independent experts.

The HELP legislation recognizes the need for legitimizing citizen input into decisions about hazard prevention, and it provides equity to citizens in the decision-making process. I believe that community inspections are a viable way to rather quickly and cheaply address the needs and fears of the community, fears that will escalate unless there is the mechanism to know, to inspect, and to talk.

Thank you.

ASSEMBLYMAN SMITH: Thank you. Move the black microphone -- yeah, that one -- over, please.

E R I C S C H E R Z E R: I am Eric Scherzer. I am Secretary/Treasurer of the Oil, Chemical, and Atomic Workers Local 8149, and I am Co-Chair, along with Jane, of the Right to Know and Act Coalition. I would also like to thank the Committee, particularly the Chairman and the other sponsor of the bill, Gabe Ambrosio, for working with us to introduce this legislation and to bring what we think is a really novel and important issue into the New Jersey Legislature.

I would first like to say that from our perspective, New Jersey needs the HELP legislation not only as workers or community groups, but the entire State needs it as a matter of public policy. This is a bill which will not benefit one group or another; it is a bill which will, as a public policy issue, benefit the entire State.

There are a couple of key points I want to make, particularly on the side of the worker provisions in this bill. I think Jane has covered some of the community provisions, and following this, David Tykulsker will go over, in general, some sections of the bill, so that the entire scope of the bill will be covered by our testimony.

I think the key concept I want to get across as far as workers are concerned, is that workers are the best protection against environmental disaster. Our members and other workers around the State are there on the scene of production, or the site of production. Any environmental disaster, any occupational disaster happens first to us. If we are there in the workplace and have the knowledge, the experience, and the ability to correct some of those problems, then we can correct them before they become disasters.

Along those lines, the Oil, Chemical, and Atomic Workers, as national oil policy, presented this proposal -- or one very similar to it -- to the oil industry in national negotiations that were just concluded. The International Union made a proposal to include, as a new job category, an environmental monitor. This new job category would be responsible for monitoring air, water, and soil in and around -- inside and outside -- all oil refineries around the United States represented by our union.

This person would be independent, reporting directly to the plant manager and Health and Safety Committee. We felt that in this way we would be able to have some provisions to stop some of the disasters that have been going on around our industry.

The industry position was, "Absolutely not." Yesterday I spoke to the OCAW's top negotiator with the oil industry. He related to me the two key provisions -- the two key arguments that the industry used in refusing to go along with that provision. One is that they had a philosophical problem with putting more power into the hands of the workers. And the second was, they felt they were doing a pretty good job.

Just last week, after our oil negotiations were concluded, there was another explosion, and three OCAW members were killed in a refinery in Whiting, Indiana. The cost of occupational disease and environmental disasters is staggering. The Mount Sinai Study that has been referred to previously -- and one of the authors of that study will be here later to talk to you about that in detail -- is really only the tip of the iceberg. It looks at OSHA statistics; it looks at five or six forms of occupational disease. Hundreds of small instances do not get into these statistics. Many, many of them don't get into those statistics at all.

Just to give you a flavor of some of that, within my own local -- a 900-person local here in New Jersey -- in the last few years, at one plant a worker was killed in a boiler explosion. At another, a worker was seriously disabled when he fell into a mixing tank at a pharmaceutical plant because of an improper lockout procedure. Two workers lost fingers in that same plant. There was overexposure to asbestos in a public sewer authority. There was overexposure to ethylene oxide, which resulted in an OSHA violation. There were two other explosions in another plant.

We recently organized a small plant of 30 workers working with adhesives, and found after we had organized that plant that over one-third of them had serious burns because of problems in the production process at that plant, and had had to be treated by a physician within the last year. This is just the tip of the iceberg in the statistics studied by the

Mount Sinai Report. It shows underneath that, hundreds and hundreds of cases like this, accidents and near accidents.

Just today there was another oil spill after loading at an Exxon facility. I understand a barge leaked 24,000 or 27,000 gallons of oil, and the Arthur Kill is closed -- just today. I don't have the details on that, but I heard it on the radio down here -- coming to testify at this hearing.

The Occupational Safety and Health Act -- OSHA -- which is supposed to regulate workplace exposure is not an answer. It is not enough of an answer; it is not sufficient. To give you an idea of how insufficient it is, I want to look at some of the numbers that have come out of that Mount Sinai Study. Let's look at human carcinogens. The study looked at nine human carcinogens. Our members work in plants with at least two of those carcinogens. Let's look at the inspection results for the New Jersey industries most frequently inspected by OSHA; the 10 industries that are most frequently inspected by OSHA for those nine human carcinogens.

Over one-half of those inspections have shown an overexposure, based upon the OSHA PEL. But more importantly, only 58 of the 2185 workplaces were inspected in the five-year period between 1980 and 1985. Just 3% of the workplaces were even gotten to during that period, and of that 3% of the workplaces, they found that half of them had OSHA violations. At that rate, it would take over 100 years to even get to those 10 most hazardous industries where we work with human carcinogens in this State. It is very clear that OSHA is not an answer, and there will be more testimony on many of these issues later on.

As far as the worker side goes, I think there are two key provisions that we want to highlight in terms of this bill: One is the ability of trained workers -- members of health and safety committees, hazard prevention committees in the workplace to shut down unsafe operations. We cannot wait

until these explosions, these exposures, these imminent dangers happen and result in serious injuries and environmental disasters. You cannot wait for those things to happen. You've got to take preemptive action, and you've got to shut down those facilities before those actions happen.

As you mentioned before -- as Assemblyman Smith mentioned -- this is a preventive bill, and we've got to have the power to take some of those preventive steps, or else the environmental disasters and the occupational disasters will continue.

The other key portion is mandated training. We must have the Occupational Safety and Health hazard prevention committees on the workplace sufficiently trained to exercise these rights. These provisions are built into the bill, and they must happen.

You will hear later on, I am sure, from many of the industry's spokespeople that these are good ideas, just as we heard on the Right to Know that they were in favor of the Right to Know, but don't pass a State law guaranteeing it. Community inspections are good. They support them, as Jane mentioned just a few minutes ago, but don't pass a State law to guarantee it. Worker training is something we should all strive for, but don't pass a State law to guarantee it as a matter of public policy. Joint health and safety committees are good; we encourage them. But don't pass a State law that will enable us to have this in every single workplace around the State.

I think this gives us an overview of some of the things, and some of the reasons why we must have this State law to make this a matter of public policy, so it will be a public policy around all the industries in the State.

Thank you very much.

D A V I D T Y K U L S K E R, E S Q.: Good afternoon. I am David Tykulsker. I am a labor and environmental attorney in Newark, and I am testifying as counsel to the Right to Know and

Act Coalition in favor of the proposed HELP legislation. Let me take just a few minutes to go through some of the highlights of the bill. There are many more provisions that we can discuss, as you wish.

I will start off by saying, the bill begins with a declaration that it is the public policy of this State to encourage citizen involvement to eliminate and prevent hazards from occurring. It is an important departure from the previous regulatory structure that we have had. It authorizes two new, nongovernmental structures, namely qualified community organizations of citizens to inspect facilities and to discuss recommendations with the facility owners and operators to prevent and abate hazards. Each covered workplace will have a Hazard Prevention Committee with ongoing, on-site responsibilities. The bill strengthens the already existing municipal Local Emergency Planning Committees that exist pursuant to Executive Order No. 161 and the Superfund Reauthorization of 1986. The bill also provides for coordination of these activities.

Now right off the bat, and fundamental to this entire bill, is a determination that as a matter of public policy, environmental releases and occupational exposures must be addressed in a unified manner. The bill does this through a comprehensive definition of hazard that includes both environmental releases and occupational exposures.

Let me raise three fundamental points in this regard: First, as has been said before, and will be said in greater detail, most substances that are released from industrial facilities into the environment involve initial, and frequently greater, employee exposure. If the public policy of this State is to prevent these exposures, a unified approach is called for.

Second -- again, this will be testified in greater detail -- occupational hazards cause families and communities to bear tremendous costs not only in dollar terms of medical

treatment and lost productivity, but also in the loss of the individual's ability to achieve the self-respect of being able to be productive, and the terrible sight of families having to see their loved ones rendered disabled.

And third, let me say that facilities that are indifferent to the occupational health of their employees are highly likely to be indifferent to the environmental health of the communities in which they are situated, and vice versa. If we, as a matter of public policy, are seeking to institutionalize prevention, it is imperative that we take a combined approach to change such antisocial attitudes.

Now, let me turn to the new structures that are in the bill itself: Community organizations qualify under this bill by having 50 people resident or working within five miles of the facility sign an authorizing petition. Building on the information contained in our Community and Worker Right to Know Law, the facility will provide the necessary information and orientation for the inspection. These qualified community organization inspections are done with advanced notice, and are limited to a maximum of six residents. The community may bring in up to two independent experts on the inspection, and funds are available in this legislation to help assist community groups to obtain the necessary experts.

Inspections are limited to one per quarter, unless the facility has recently had an extraordinary polluting event, in which case there may be one inspection per month. Representatives of the workplace Hazard Prevention Committee and the Local Emergency Planning Committee may accompany the community inspection.

Following the inspection, the community organization is obligated to send a report of its findings and recommendations to the facility. This report must be discussed by facility management and the community, with a view to drawing up what is going to be, we hope, a binding "good

neighbor" agreement. Both the workplace Hazard Prevention Committee and the Local Emergency Planning Committee are encouraged to have input.

Turning to the workplace hazard prevention committees, these are structures by which facility employees become the front-line of environmental enforcement. The bill provides in the private sector that each "covered facility" -- which is defined by industry or SIC code -- with 20 or more employees, must have a Hazard Prevention Committee. In the public sector, each State department will have one committee per county, and each municipality must have a committee. The size of the committee varies, of course, with the number of employees, up to a maximum of 14.

In nonunion facilities, employees elect one hazard prevention coordinator, the co-chair of the committee, and the committee members are also elected. They are known as "hazard prevention advocates" in the bill. To avoid any possible Federal preemption problems in unionized facilities, the union determines this selection process.

Facility management appoints the other coordinator and the remaining advocates. Advocates and coordinators are given a number of powers in this bill, in particular to inspect the facility, investigate releases into the environment, and take other actions designed to uncover hazards. Regular meetings of the committee must occur at least monthly, and again, special meetings in the event of an extraordinary polluting event may be called by either coordinator.

The minutes of meetings are posted for facility employees to see, so that they may be involved in the process. Employee advocates and coordinators, as Eric mentioned, are required to receive hazard prevention training, and the Department of Environmental Protection, the lead agency under this bill, is required to provide supplemental training of two committee members in advanced hazard recognition and

abatement. Members of the committee are granted paid time to perform their duties.

Tie votes among committee members as to procedural matters are resolved by an arbitrator appointed by the Governor. The arbitrator is a serving advocate. Let me be absolutely clear that this bill does not empower an arbitrator, a court, or anybody else to require facilities to meet existing regulatory standards, or take any substantive action to abate hazards. Rather, all of the contractual, regulatory, and statutory mechanisms are left untouched, with one exception -- Mr. Scherzer has alluded to this -- and that is:

There is a substantive power in this legislation that goes to an advocate or a coordinator to require a temporary cessation of an activity that creates an imminent danger of a major hazard. This power is only to be exercised if no greater hazard is created by the temporary cessation. The power is conditioned on an initial request to facility management to abate the hazard, and the cessation is limited to only such time as is necessary for the appropriate governmental inspector to be present for the restart of the activity. That is, once the governmental inspector comes, the activity, whatever it is, may be started.

Let me say that there is a lot more in this bill. I think you've got summaries available to you. If not, I have more here. Let me thank you for the opportunity to participate with the Coalition and to testify before you. We look forward to continuing the dialogue.

ASSEMBLYMAN SMITH: Thank you. Is Dr. Markowitz present? (affirmative response from audience) Will you please come forward? Also, Jerry Poje, from the National Wildlife Federation. Dr. Markowitz?

D R. S T E P H E N M A R K O W I T Z: My name is Stephen Markowitz. I am an occupational medicine physician and Deputy Director of the Division of Environmental and Occupational

Medicine at the Mount Sinai School of Medicine in New York City. I am grateful for the opportunity to speak today, although I must admit that if I had waited for 10 more speakers, I might not have had anything to say.

I have given you copies of the 100-page report from Mount Sinai, as well as the Executive Summary, and on the yellow sheet are sentinel facts from our Study.

I would just like to spend a few minutes going over the results and our recommendations. For people who want greater detail, I suggest that you get a copy of the report from the New Jersey Department of Health, or from us at Mount Sinai, and afterward I would be glad to answer any questions.

In March of 1989, the New Jersey Department of Health asked our department at Mount Sinai School to conduct a study of occupational disease in the State of New Jersey. They asked us to perform three tasks: First, to assess the nature, magnitude, and costs of occupational diseases in New Jersey; secondly, to describe currently available professional resources; and thirdly, to make some recommendations about how to improve the recognition of occupational disease in the State, and how to ameliorate the conditions which produce this burden of disease.

We reviewed all available data from the State and from the country, and came up with estimates of disease and deaths that occur in New Jersey due to occupational factors.

ASSEMBLYMAN SMITH: Doctor, let me ask you to hold up for one second.

DR. MARKOWITZ: Sure.

ASSEMBLYMAN SMITH: Can the people in the rear hear the Doctor very well? (negative response from audience) All right, Doctor, I am going to ask you to pull that microphone right up to--

DR. MARKOWITZ: This one?

ASSEMBLYMAN SMITH: No, the black one. Pull it very close to your oral cavity (laughter), to get maximum amplification.

DR. MARKOWITZ: I am not a surgeon, so I won't be able to--

Occupational diseases encompass a tremendously diverse set of human diseases. When we refer to occupational diseases, we are referring to occupational cancers produced by a variety of exposures, most notably asbestos producing lung cancer, or benzene producing leukemia. Other occupational diseases include hypertension or high blood pressure, leading to heart disease and strokes. Other illnesses include reproductive impairment known to be caused by heavy metals and other conditions.

In totaling up the number of these occupational diseases, we estimated that roughly 2200 to 2700, or 2800 deaths per year occurred in New Jersey as a result of occupational disease.

Now, notice we only looked at certain categories of illness, principally occupational cancer, but also other major killers such as cardiovascular disease, dust diseases of the lungs, such as asbestosis and silicosis, and other chronic respiratory diseases and neurological disorders.

By way of contrast, I might point out that in the mid-1980s, only 58 people per year received Workers' Compensation for occupational deaths; i.e., deaths related to either occupational diseases or occupational injuries. Additionally, we estimated that 7000 to 14,000, roughly speaking, new cases of occupational illness occur each year in this State. These estimates may, in fact, represent underestimates because physicians do not routinely diagnose occupational diseases.

Now, speaking in terms of specific data, actual numbers of people who get sick from occupational diseases, the

New Jersey Department of Health, which has an excellent Occupational Health Program, recorded, in the mid- and late-1980s, that close to 1000 workers per year in New Jersey suffer from poisoning from heavy metals, including lead, mercury, arsenic, and cadmium, and over 1000 people per year are hospitalized in this State due to just the dust diseases of the lungs, principally silicosis and asbestosis, which is scarring of the lungs produced by silica and asbestos, respectively.

Health costs and other costs associated with diseases are difficult to estimate. However, we looked at the costs associated with our disease estimates, and came up with the figure that over $280 million is the cost simply from medical care and lost earnings of workers who become sick from occupational diseases in New Jersey. That is an annual cost of over $280 million per year.

We looked at how many occupational health professionals there are in the State. It is rather alarming to realize that there is only one occupational medicine physician per 110,000 workers in this State, although, frankly, this State is no different from many other states in terms of this. In fact, there are only 33 board certified, or trained occupational medicine physicians in this State, out of a total of over 43,000 physicians.

We also looked at -- and this is the last set of numbers I will cite-- We looked at hazardous exposures. I think this is especially relevant for this legislation that is pending. Roughly 100,000 to 400,000 workers in New Jersey work in the 50 most hazardous industries in the State. We looked at OSHA inspection results. Mr. Scherzer referred to this before, but let me just cite a couple of instances in particular for silica and lead, which really are well-known hazards for which diseases associated with these two agents have been known for centuries.

If we look at OSHA inspections in the '80s -- 1980 to 1986 -- if we look at the industries where OSHA most frequently inspected for lead and silica, and OSHA went to the industries which have, presumably, the most exposure, they routinely found overexposures; meaning air levels above the permissible exposure level set by OSHA. Somewhere between one-third and 50% of the inspections led to assessment of an overexposure to one of these agents.

Furthermore, in that six-year period, OSHA was really only able to reach a small percentage -- roughly 5% to 10% -- of all the workplaces which were in those industries known to be at high risk for overexposure to silica and lead. If OSHA were funded at its current level, it would take 50 to 100 years just to get through every workplace in these high risk industries for lead and silica once.

We made several recommendations from our study, one of which was to increase worker participation in assuring safe and healthy workplaces. Secondly, we recommended that a worker education program be set up. We have a highly successful program in New York State, where $6 million to $7 million per year comes out of Workers' Compensation premiums to pay for improved quantity and quality of worker education programs by labor and management. And we made some recommendations about enhancing professional education in the field. Finally, we recommended that the State establish a network of occupational health clinical centers, so that the workers in New Jersey can be fairly and objectively diagnosed as having occupational diseases, which undoubtedly occur. When such clinics are set up and when physicians are available to diagnose occupational disease, then we will have more exact figures as to how many people are actually affected by occupational diseases in this State.

Thank you.

ASSEMBLYMAN SMITH: Thank you, Dr. Markowitz.

Before we have our next speaker present his testimony, the Chairman of the Senate Environmental Quality Committee has arrived, the Honorable Senator Richard Van Wagner. I asked the Senator if he wanted to say anything at this time, and he thought he would rather continue listening to the witnesses.

So, at this time, let me ask-- Is it Mr. Poje?

G E R A L D V. P O J E: Yes.

ASSEMBLYMAN SMITH: Let me ask Jerry Poje, of the National Wildlife Federation, to present his testimony.

MR. POJE: Thank you. My name is Gerald Poje. I am the environmental toxicologist working in the Environmental Quality Division of the National Wildlife Federation. I want to thank the Chair and the members of the Joint Committee for the opportunity to provide this oral and written testimony on the New Jersey Hazard Elimination Through Local Participation Act.

The Federation commends Senator Gabriel Ambrosio and Assemblyman Bob Smith and all of the co-sponsors for bringing the HELP bill before the Legislature.

The National Wildlife Federation has been guided for a long time by the national goal articulated last year by the President. President Bush announced, on June 12, 1989, in his address on the Clean Air Act: "People living near industrial facilities should not have to fear for their health."

Serious policy initiatives to guarantee freedom from fear must contain provisions to prevent chemical accidents through an open, cooperative dialogue involving community safety advocates, organized labor, and industry. The HELP bill represents the strongest State approach towards assuring this process.

I would like to make three major points. For the last three-and-a-half years, I have been heavily involved in the issue of chemical accident prevention, and three points really

need to be emphasized for the United States as a whole, and New Jersey as part of that issue as well:

Number one, chemical accidents occur frequently in the United States; number two, industrial facilities in communities are unprepared to understand and to respond to the consequences of chemical accidents; and number three, chemical accidents are not subject to thorough public investigations.

I will just give you a few statistics on chemical accidents or occurrences: The frequency of accidental releases of toxic chemicals is often underestimated. We have only one national data base, the Acute Hazard Events Data Base put together by the U.S. Environmental Protection Agency. They have cataloged, over the last eight years, 11,000 events. In other words, this partial listing of accidents provides a record of nearly four accidents -- chemical accidents -- involving toxic chemicals every day.

According to EPA and this Acute Hazard Events Data Base, there have been over 309 deaths, more than 11,300 injuries, and nearly 500,000 people evacuated. Other EPA data indicates that over the last 25 years, the United States has experienced at least 17 chemical accidents rated as having Bhopal potential consequences. In other words, the amount of chemical released equaled, or exceeded that released at Bhopal, India. Fortuitous circumstances, such as wind direction and the location of people in the nearby vicinity, prevented the dire consequences of Bhopal in the United States.

Underreporting is a consistent problem in this national data center. If we look at other regional data bases, we can see that in 1987 alone New York tabulated 1000 incidents, a 47% increase over the previous year. In the same year, the California Hazardous Materials Incident Reporting System logged nearly 2500 events under a voluntary reporting system. If we took California's pattern as typical, that one state would have had nearly 20,000 accidents during the eight-year period, far exceeding EPA's data base.

The other issue at play is that industries and communities remain unprepared. In 1985, EPA launched a voluntary National Chemical Emergency Preparedness Program to foster community planning and preparation. Congress later built upon this program with the Superfund Amendments and Reauthorization Act, setting up the Local Emergency Planning Committee process that is part of the HELP legislation.

One additional important effort within the Superfund Amendments was the mandate for EPA to conduct a major study of preparedness in the United States in dealing with chemical accidents. Section 305(b) of the law mandated that, "EPA review emergency systems for monitoring, detecting, and preventing releases of extremely hazardous substances at representative domestic facilities that produce, use, or store extremely hazardous substances."

The results of that study are not pretty. In their report, EPA examined four areas: The first area was management. The study reported that the management approach of roughly two-thirds of all responding facilities was not dedicated to setting goals or measuring achievements. About a quarter of the managers did not seem to appreciate the risks and hazards involved in their operations, and many facilities, especially smaller ones, considered only worker safety issues, rather than the issues of community safety. The management of many facilities in the chemical industry are not sufficiently knowledgeable or committed to emergency planning. This lack of management commitment was reflected in limited action in the following three areas: training programs, preventative maintenance, and management improvement efforts.

The second major area was prevention systems. Chemical facilities are, in large part, ignorant of the existing technologies and techniques available for the prevention and mitigation of accidental releases. Hazard evaluation techniques are formal techniques used to identify

process risks that could lead to an accidental release. Unfortunately, while many of the respondents stated that they use hazard evaluation methods, less than half are using the American Institute for Chemical Engineers, recognized techniques. So, they are using less than appropriate techniques for identifying hazards.

The third area was monitoring and detection systems. We have many techniques available, and technologies available, for monitoring and detecting chemical releases. However, they are not widely utilized in facilities, and facilities seem to have little indication in this study of those techniques.

Finally, in the public alert systems, two-thirds of the facilities responding to the survey did not have a clear decision-making procedure for determining when a release justified notifying communities about the release. Two-thirds of the communities responding indicated that they had written warning plans or procedures of how to notify the public, but half of the communities were not able to describe clearly what those procedures were -- clearly an unacceptable process.

The third major area that bears investigation here and comment, is that chemical accidents go relatively uninvestigated in our society. This operates across the country, not just in the State of New Jersey. We have had several examples given here today. My testimony contains two key examples that I would like people to focus on, and I will leave it -- for the sake of time -- to the people on the Committee who might want to review this.

In summary, let me just articulate the position of the National Wildlife Federation. We support the HELP bill because its provisions would set up a reasonable framework to bring the public and labor to the table in order to reduce accidental and routine emissions from major chemical-using facilities. In particular, we recommend the HELP bill to the New Jersey State Legislature and to Governor Florio because its provisions do

three important things to move beyond the Federal status on Emergency Planning and Community Right to Know:

Number one, it assures balanced Local Emergency Planning Committees. Right now, across the country, Local Emergency Planning Committees are very fragile structures. Their fragility is, in part, attributable to the failure to specify the appropriate participants on those LEPCs.

Number two, the provisions of the HELP bill provide new public rights of access. Duly constituted community organizations would gain the right to meet with safety management structures of industry and to inspect the facilities with expert assistance. None of these provisions are guaranteed by existing Federal law.

And finally, the third provision that we recommend as being extremely important in the HELP provisions-- We would create through this law hazard prevention committees to oversee the workplace hazards.

I appended to my testimony the testimony recently given in October by Vice President Robert E. Wages of the Oil, Chemical, and Atomic Workers on the tragedy that occurred in Pasadena, Texas, where 23 workers were killed at a Phillips Petroleum facility making high density polyethylene. He goes through and identifies the systematic failures of utilizing the knowledge and the expertise of workers in setting policies on accident prevention. I would recommend that testimony to you for a systematic approach to some of the failures which occur in dealing with the workplace hazards of chemical accidents.

Thank you.

ASSEMBLYMAN SMITH: Thank you, Mr. Poje and Dr. Markowitz.

Our next three speakers will be: Marian Wise, Vic DeLuca, and Dolores Phillips. Ms. Wise is with the New Jersey Public Interest Research Group; Mr. DeLuca is with New Jersey Citizen Action; and Dolores Phillips is with the New Jersey

Environmental Federation. I guess, Marian, you will be the leadoff speaker.

M A R I A N W I S E, E S Q.: Good afternoon. My name is Marian Wise, and I am an environmental advocate for the New Jersey Public Interest Research Group.

New Jersey PIRG is a nonprofit, nonpartisan organization with over 75,000 members throughout the State of New Jersey. We engage in research, education, litigation, and advocacy in the areas of environmental preservation, consumer protection, and governmental reform. We are very happy to be here today and we thank Senator Van Wagner and the Senate Environmental Quality Committee, as well as Assemblyman Smith and the Assembly Energy and Environment Committee, for affording us this opportunity today to present our testimony in support of the New Jersey Hazard Elimination Through Local Participation Act.

As you know, under the Right to Know law, in 1988 the large industrial facilities in New Jersey and across the nation were required for the first time to report their 1987 releases of toxic chemicals into the environment. Now, this crucial right to know information, for the the first time, revealed the toxic problem in our State and across the nation. Our report, "Toxic Trends," which is a study of the largest toxic chemical dischargers in New Jersey, revealed that in 1987 alone, over 225 million pounds of toxic chemicals were released into the State's air, water, land, and sewage systems, and an additional 27 million pounds were transferred to off-site treatment facilities.

Now, we narrowed our focus to discharges involving chemicals which pose known threats of cancer or adverse reproductive effects, such as birth defects or fetal damage. What we looked at were the 17 largest facilities which exceeded the 400,000-pound threshold for discharges of these kinds of toxic substances. Now, the top facilities alone discharged a

total of about 16 million pounds of known or potential carcinogens. About 12 million pounds of these substances went into the air, and another four million into the water.

The specific chemicals-- One example that we took under consideration was benzene, which is a human carcinogen which produces myeloid leukemia and lymphomas by inhalation; also, benzene is an experimental carcinogen and teratogen. Another chemical we took a look at was vinyl chloride, which is a human carcinogen which causes liver and blood tumors, and is also an experimental carcinogen and teratogen causing human reproductive effects by inhalation and changes in spermatogenesis, as well as human mutagenic effects.

As you all know, air and water discharges of these chemicals directly impact the health of workers and the environment in the community in which a facility is located. Now, when these numbers were first evaluated, the sheer magnitude of the chemical releases revealed by this Right to Know law caught the public, the government agencies, and industry totally by surprise. Some companies tried to defend their high discharge numbers by arguing that their particular releases consisted of relatively benign chemicals. Others tried to convince the public that human health risks associated with these releases were very low. Others reacted by pledging to reduce their releases, some as much as 90%.

We took a look at the 1988 data for the same facilities which in 1987 discharged over 400,000 pounds of these same chemicals. The overall total discharges from these facilities were reported to be reduced by about two million pounds. These reductions were evident only in reported air emissions. In fact, emissions to water reportedly increased by over 300,000 pounds, an increase of almost 7%.

We found that most of these reductions were mainly due to decreases in production. Our report also concluded that the reductions, if any, were very minimal, and that true use of

toxic chemicals -- reduction of the use of toxic chemicals was simply not occurring. It is also important to remember that only the largest toxics users were required to report, so the total reported discharges represent only a very small portion of all the toxic chemicals in our State and across the country.

As you know, we have this established right in New Jersey. We have the Right to Know Law. We have the Toxics Catastrophe Prevention Act, which assures that extremely dangerous substances used by workers or stored in our communities are handled in such a way as to prevent potential catastrophic discharge. It is now time for the workers and consumers of the State of New Jersey to have the right as a matter of law to reside in communities and be employed in workplaces where they can play an active role in ensuring that the dangers associated with the use of hazardous substances are reduced to an absolute minimum. The provisions of the HELP legislation will afford citizens and workers much needed powers to achieve this goal.

We in New Jersey PIRG believe that all facilities should reduce their use of toxic chemicals, and do so by practicing pollution prevention and toxics use reduction. The best way for facilities to accomplish these reductions is to change their production processes and products so that they use fewer toxic chemicals, thereby achieving less worker exposures and hazards in the first place.

Just as toxics use reduction is a crucial pollution prevention strategy, so is Hazard Elimination Through Local Participation. Preventative strategies should be sought by companies at the production level and throughout the industrial facilities, in conjunction with active education and input of employees and local citizens. We are in desperate need of legislation that encourages industrial and local participation in the reduction and elimination of toxic and other hazardous

threats to human health and to our environment. We therefore strongly urge you to support the HELP legislation.

Thank you very much.

ASSEMBLYMAN SMITH: Thank you, Ms. Wise. We will now have Mr. Victor DeLuca, New Jersey Citizen Action. Mr. DeLuca?

V I C T O R D e L U C A: Thank you very much, Mr. Chairman.

Members of the Committee, I would like to thank you for this opportunity. I am Victor DeLuca, a member of the New Jersey Citizen Action Executive Board, and Director of the Ironbound Community Corporation in Newark.

New Jersey Citizen Action is the largest citizen coalition, with over 67,000 individual members and over 65 affiliated organizations. These organizations represent community, labor, senior citizen, tenant, religious, and environmental groups which have joined together to work on issues of mutual concern. My organization, the Ironbound Community Corporation, is a proud member of this coalition, and there are members throughout this audience who are also members of Citizen Action.

I am here today to describe some of the information that New Jersey Citizen Action has made available to the public in its study, "Poisons in Our Neighborhoods." I have a copy here, and I will make sure that the Committee gets it. The study is based on information made public by the Federal Environmental Protection Agency, as legislated in the Federal Right to Know Law, from the Toxic Release Inventory Reports required to be filed by manufacturers which either use or produce toxic chemicals.

The Citizens Action study, produced for them by the Citizens Policy and Education Fund, provides a detailed accounting of toxic waste transfers and releases from every facility that falls within the thresholds and fulfilled the reporting requirements. It is the first time that this information has been made readily available to community groups

across the State for all of these facilities. As a community leader in Newark, I can tell you that the results were eye-opening.

We have an accounting of toxic output -- a total accounting -- the toxicity of these outputs, and the destination of those outputs available at the fingertips by facility, zip code, and county.

I am particularly glad to be here today because my neighborhood, where I live, where I breathe, where I work -- the Ironbound section of Newark -- zip code 07105, ranked second in the State for toxic releases. Now, this was in 1987. Over 12 million pounds of toxic releases were found in my neighborhood, and that is just in my neighborhood.

I guess there is some good news, that being that we were second. Unfortunately, our friends in Elizabeth were first, zip code 07201. They totaled nearly 20 million pounds of toxic emissions. The bad news for us in Ironbound and our neighbors in Elizabeth, and many other locales, is that we share the same air.

I would like to give you a more general view of what the study uncovered across the State: Ironically, we are currently in the county with the largest amount of toxic releases in the State. Middlesex facilities released over 46 million pounds of toxics, followed by Union County with over 40 million pounds, and Essex with 20 million pounds -- 28 million pounds, excuse me. Rounding out the top 10 counties -- and it seems a little weird calling them the top 10 -- in order were: Bergen, Hudson, Gloucester, Passaic, Morris, Camden, and Burlington.

As to the destination of these chemicals, they end up in one of six places: the air we breathe, the water we drink, the land that we either live, work, or recreate on, our public sewerage systems, or these chemicals are transferred off-site where the final destination is not disclosed under the current available information.

The greatest amount of releases into the air occurred in Middlesex, Union, and Essex Counties. Those in water -- the greatest amount released into the water -- were reported in Salem, Burlington, and Passaic Counties.

Transfers to public sewage systems are far more dangerous than one may expect. Public sewage treatment plants are not designed principally to treat toxic chemicals. Although some of these substances receive effective treatment in a sewage treatment plant, many do not. Sending toxic wastes to public sewer systems does not provide complete or safe disposal.

Some toxic organic chemicals never reach their destination. They are volatile. They dissipate into the air due to the warm temperatures and turbulence in the sewage lines. Other chemicals are released to air during the treatment process. Some organic chemicals pass through the plant untreated to the receiving stream, and toxic metals end up in sewage sludge which is applied to farmland, incinerated, or landfilled.

The most transfers to public sewage systems were in Essex, Middlesex, and Union Counties.

The Federal and State Right to Know laws have made this information available to us, and that is good. The information is now, for the first time, available to both the general public and even to government regulators. It is made clear to all of us that something must be done to reduce the threat of toxic exposure.

I brought a map of my neighborhood -- zip code 07105. If you will take a look at this map, all these dots represent toxic releases. We're talking about 50,000 to 60,000 people who live here and have to put up with 12 million pounds of toxic releases in one year. And that is just one neighborhood in one city of the 567 municipalities in this State.

We deserve the right to make sure that these neighbors -- these industrial neighbors -- do everything they can to reduce the health threat to our residents.

That is why New Jersey Citizen Action strongly endorses the Hazard Elimination Through Local Participation Act. It will give community groups like my own the ability to act to protect our families, our friends, and our children. New Jersey needs HELP!

Thank you very much.

ASSEMBLYMAN SMITH: Thank you, Mr. DeLuca. Ms. Dolores Phillips, New Jersey Environmental Federation.

D O L O R E S P H I L L I P S: Thank you, Mr. Chairman and members of the Joint Committee. My name is Dolores Phillips, and I am the Legislative Director of the New Jersey Environmental Federation, New Jersey's largest nonprofit environmental organization. It is a coalition which consists of over 60,000 individual members and 45 member organizations. The Federation is in support of HELP, and considers HELP to be one of its top legislative priorities for this session.

One of the major reasons that environmental activists joined the Federation in the past, was because of industries that had created severe environmental hazards near their homes. Outraged by the toxic havoc that these corporations have wreaked on their lives, these individuals have had to initiate time-consuming and costly battles against industries such as International Flavor and Fragrance based in Union Beach, Harvard Industries in Union, Allied Chemical in Bridgewater, and Vineland Chemical in Vineland. These industries were targeted in the Federation's "Filthy 15 Campaign" in 1986, which isolated and publicized some of New Jersey's worst polluters.

They are cases in point of disasters that were not abated through the conventional routes of DEP law enforcement. DEP seems to have become a buffer between industry and New

Jersey citizens, as evidenced by its inability to roll back pollution and preempt toxic disasters. HELP will be such that; help to DEP and industry to prevent environmental hazards and potential disasters such as the ones named above. HELP's proposed community inspections will bring those affected by environmental hazards into the bargaining process with industry leaders, thereby creating an atmosphere where industry will inevitably become accountable to the community.

Industry will be forced to have direct and personal communication with its neighbors. They will no longer be nameless, faceless citizens. Additionally, the hazard prevention committees in this legislation will give employees the ability to have input into the recommendation process, to improve the industry workplace. Indeed, a safer inside workplace will mean a safer environment outside.

In conclusion, this legislation gives industry the opportunity to strive for a standard of excellence that goes far beyond the compliance mentality that New Jersey's rules and regulations foster. Instead of just meeting these bare minimum standards, HELP will result in true environmental hazard prevention. We encourage the swift passage of this important legislation.

Thank you.

ASSEMBLYMAN SMITH: Thank you, Ms. Phillips.

I know that the proponents of the legislation have another six speakers that they would like to put forward in presenting their case, but we also indicated that we would try to provide an hour each up-front to get the case on and the opposition on. At this point, one hour has elapsed for the proponents of the legislation, so I will ask those people who are here for community inspection experience and approving Local Emergency Planning Committees to hold on, and let's give some of the industrial representatives an opportunity to speak their piece.

Mr. Hal Bozarth, of the Chemical Industry Council, has indicated that he has a panel of speakers to speak in opposition to the legislation. Mr. Bozarth, please identify yourself, and move forward.

H A L B O Z A R T H: Thank you, Mr. Chairman. I do have a panel of folks with me today, and after I give some brief opening remarks from our perspective, I would like to call them up, sometimes in pairs, sometimes individually, if that is all right with you and the members of the Committee.

Good afternoon. My name is Hal Bozarth. I am the Executive Director of the Chemical Industry Council of New Jersey. The CIC is a trade association comprised of approximately 105 member companies in the chemical and allied products industry in the State of New Jersey. I am pleased to participate in these discussions, since the member companies which I represent are deeply concerned with the proposed legislation.

The premise of this legislation is that State and Federal government, and most of all industry, cannot be relied upon to protect the public from potential risks. No one can quarrel with the notion that businesses and government should carry on their activities in a manner that minimizes unnecessary risks to health and the environment. But, contrary to what the proponents of the bill would have you believe, a very large and structured regulatory framework is currently in place to protect our workers and the public safety. In fact, CIC member companies themselves pride themselves on doing just that. All facilities are subject to a variety of workplace and community health, safety, and environmental protection regulatory programs administered by the local, State, and Federal governments.

In addition to the myriad of State and Federal regulations, a large segment of the industry, including my membership, has gone above and beyond these regulations to

impose their own volunteer initiatives designed to ensure that their operations are conducted in a safe manner and that unavoidable mishaps are responded to promptly and effectively.

Before embarking on legislation as broad as the HELP bill, we suggest that the Legislature look toward improving the existing government regulatory system, if there are specific problems not now addressed. The real question then is not whether industrial activities should be operated safely, but whether HELP would establish a necessary, desirable, or cost-effective additional program to achieve that objective. We believe that it would not. To the contrary, HELP would be disruptive, expensive, and redundant in many, many cases, and would potentially create safety problems on its own. It would also potentially compromise the protection of valuable trade secrets and create a drag on the productivity and the competitiveness of businesses in New Jersey, which as you all know, Mr. Chairman, compete in the global economy.

In addition, HELP would seriously interfere with traditional management prerogatives and intrude into the area of labor management relations. HELP would also compromise the due process rights of employers, and would authorize private citizens to exercise governmental functions for which they are not trained.

Finally, HELP would legislate in an area currently being considered by the U.S. Supreme Court; that is whether a union that participates in work site safety and health monitoring can be held liable under State law to employees in the event of a catastrophe or an injury.

For these reasons, while we share the concern of the HELP bill sponsors to protect workers and community residents from hazardous materials and conditions, we do not believe that HELP, as it now stands, is a necessary or desirable way to achieve that objective.

I would first like to address part of the history behind the bill and why we feel it was not built on as solid a foundation as it could have been. The proponents of the legislation are pointing to, among other things, a study that claims thousands of workers die each year in New Jersey due to occupational disease. This study, as you know, was commissioned by the New Jersey Department of Health and was conducted by the Mount Sinai School of Medicine. The members of the Chemical Industry Council have taken a good hard, scientific look at this study and, although we found it to have some valuable points, we do not believe its findings can, or should be used as a precursor to new legislation.

Qualified epidemiologists have looked at this report, and noted that the occupational disease data in the study is wholly based on estimates, and erroneously paints a picture that we feel does not exist. These experts told us that even if the data cited in the report were accurate -- and we submit they are not -- it is from disease resulting from exposures occurring 20 to 30 years ago, before OSHA was in place to monitor workplace safety and asbestos production was in full swing, and before states like New Jersey put into place far-reaching environmental protection laws.

We at the CIC are not criticizing the Department's attempt to catalog what occupational disease services actually exist in New Jersey. In fact, we agree with the study's recommendations and the need to coordinate the network of occupational disease surveillance, improve occupational disease training for doctors, nurses, and hygienists, and establish a statewide network of occupational disease centers.

Let me underscore the fact that New Jersey's industry, at least that part that I represent, is concerned and committed to the health and safety of our workers. That is why many companies in New Jersey have conducted studies to train worker health over the years. From all the reports we have received,

chemical industry workers have a lower incidence of cancer than the general population. In addition, we know from non-industry sources, such as those compiled by the American Cancer Society, that the vast majority of all cancers are caused by life-style habits -- what and how much we eat, drink, smoke -- and that only a small percentage is "statistically" related to occupation.

The backers of the HELP bill would also have you believe that industry, by and large, is not able to operate safely. We would like to point out that a strong regulatory framework is already in place to underscore that imperative which we hold dear. Facilities in New Jersey are inspected regularly and frequently in an unannounced fashion by the following groups: OSHA, DEP, EPA, local fire officials, local and county health officials, and soon, the New Jersey Department of Health under the guidelines set forth by OSHA, RCRA -- the Resource, Conservation, Recovery Act -- TSCA -- the Toxic Substances Control Act -- the Toxic Catastrophe Prevention Act, the Spill Fund, the New Jersey Right to Know Act, fire permits, and the County Environmental Health Act.

I want to take a second, Mr. Chairman, if I may, to remind the Committee that passage by the Legislature three years ago of the Toxic Catastrophe Prevention Act, deals with many of the concerns that have been evidenced here this afternoon; that is, is there a regulatory structure in place to make sure, to the greatest extent possible, that hazard prevention programs are in place in the workplace for those substances which are potentially catastrophic should something, God forbid, go wrong.

I know that you, Mr. Smith, worked on the TCP Act and were quite proud of its accomplishments. Industry has gone forward and implemented those plans for over 100 substances, and we feel not only is it something that the State can be proud of which has helped the government get a handle on

exactly how safe the facilities we run are, but in cases where they are not, to right those wrongs.

I have brought along two charts that I will give to the Committee later, Mr. Chairman -- that I would like to make available. Although not all encompassing, they outline briefly some, but not all, of the statutes, regs, orders, and directives currently on the books involving hazardous materials control, emergency response, and worker safety.

I will just stop for a second and show you basically the kinds of things that you will be able to see later on. This is the regulatory framework under which those companies which operate with potentially dangerous materials must respond to the government on.

We do not believe that this legislation would, in any way, augment the programs that currently exist and protect the safety of the workers, the community, and the environment. Instead, we believe the legislation could be very disruptive, and expensive, obviously, leading to a reduction of the productivity and competitiveness of our businesses.

We believe that the proponents of HELP should carefully examine those regulations that I have talked about, so that we do not see redundant, counterproductive legislation which would, in application, have an adverse effect upon an industry which is the State's manufacturing strength and puts over $14 billion a year into the State's economy, and those entrusted with regulatory responsibility.

I don't think we have the time today to go through it line by line. Frankly, I don't think that is why we are here. Rather, I will quickly note some of the most important redundant provisions: The HELP bill would authorize Local Emergency Planning Committees -- LEPCs, if you will -- qualified community organizations, and hazardous prevention coordinators to conduct facility inspections. As I have already noted, OSHA, EPA, and a host of State agencies already

have the authority to regularly conduct these inspections and, frankly, they do. In addition, LEPCs and QCOs would be able to conduct monitoring and sampling, the same tests that owners and operators are required to conduct under various Federal and State laws, and that OSHA, EPA, and State agencies conduct during compliance inspections.

Adding to this confusion, is the fact that HELP's provisions duplicate, in many cases, itself. Not only are these facility inspections by QCOs, inspections are separately conducted by LEPCs, and are again mandated by the facilities' own hazardous prevention coordinators. This bill would empower three separate groups to conduct their own individual inspections at intermittent time periods. In fact, there appears to be no limit, in many cases, to the number of inspections that can be done by any one of those groups.

I think it goes without saying that these numerous inspections conducted, for the most part, by nontechnical laymen, could very well be disruptive, again expensive, and reduce manufacturing productivity, something that our industry is trying to do to remain competitive with folks in the other states and across the oceans.

The impact of this bill, especially to small business, could potentially be traumatic. Obviously, we are concerned about the impact to industry. We are also equally concerned about the impact on the public. Frequent and repetitive inspections by members of LEPCs and QCOs not only could be disruptive, but could also create additional safety risks. The presence of nonemployees at a manufacturing facility inevitably creates increased risk of accident and injury. While training and the provision of protective equipment can reduce these risks, they cannot be entirely eliminated, particularly since the inspection teams will be visiting what are presumably the most potentially dangerous areas of the plant.

We do not believe it is in the best interest of the public to allow such dubiously trained nontechnical laymen to control, or to access plant operations. The provisions in the bill dealing with imminent hazard shutdown, although talked about earlier this afternoon, is deeply disturbing to us. This would allow a "hazard prevention advocate," whoever that is, to direct the cessation of any operation, activity, or process that he or she believes in good faith constitutes an imminent hazard; in other words, turn off the switch, shut down the operation. This provision creates a major potential for disruption. Since the definition of "imminent hazard" is vague and quite broad, it opens the possibility of hazard prevention advocates, again "who are unlikely to possess the kind of extensive educational background needed to make well-informed judgments in this highly technical area to shut down operations." Needless to say, the destruction to industry would be significant.

In conclusion, I respectfully request that this Committee consider three of the points I made during the testimony: One, that the regulatory framework is already in place to ensure the safety of New Jersey citizens. Frequent unannounced safety inspections are conducted by OSHA, DEP, EPA and, in the case of OSHA, upon the call of an employee who believes that a hazard exists -- OSHA must, and does respond to those phone calls -- and a host of other local authorities.

Two, that workers and community health are of the utmost concern to industry, so much so that our workers in the chemical and allied products industry are healthier than the average citizenry. Frankly, we don't feel that qualified epidemiological study has proven that there should be concern today about living near, or working at a chemical facility.

Three, that the industry has a productive working relationship with the emergency responders and the LEPCs, some of whom you will hear from this afternoon. We have given

funding, computers, updated equipment, and training, and have assisted in planned development for LEPCs around the State. Parenthetically, let me say that even though the LEPC process is not as totally underway as it should be, we, in industry, are committed to making that process go forward and be viable in all of the areas where it is desperately needed.

In the interest of providing the Legislature with industry's best thinking in these areas, I brought along some people with me. Before I bring them up, Mr. Chairman, let me just talk about the emissions that you talked about in your opening statement, and which others have alluded to.

The Chemical Industry Council, again comprised of 105 member companies throughout the State, has taken a look at that SARA Title III data. We have compared and contrasted the emissions data between '87 and '88 for our member companies. I would like to bring those, again, gross statistics to you, just so you can think about what industry is already doing.

Between '87 and '88, in our membership alone, our air reductions, or the reductions in the air emissions, have gone down approximately 22%. In the area of water discharges from the Chemical Industry Council's membership alone, between '87 and '88, the amount of reduction is approximately 38%. And relative to land disposal, again only from my membership, our numbers have gone down 14% over the two-year period.

While I know that the members I represent are striving to do the 90% reduction in air, for instance, which was talked about earlier in the Monsanto situation, it is an evolutionary process. Industry is committed to continuing that process of reducing its emissions, even though we don't believe that they have ever posed a threat to the members of the community, and were all permitted releases by the State agencies. We will go forward with that operation. As a matter of fact, we have calculated, again for only our membership, that over the two-year period, we saw a total reduction in emissions of 374,000 pounds. Air alone was 3.4 million pounds in reductions.

I know that that is not down to zero, and I understand the theory behind zero reduction. But the industry is moving in these areas in a committed fashion.

With that, Mr. Chairman, let me ask two epidemiologists to join me at the table to discuss the Mount Sinai Study from our perspective, again both the pros and the cons. Dr. Dan Thomas, who is the Occupational Health Director for Hoechst Celanese Corporation, if you would come forward, and Dr. Lorraine Lucas, Manager for Epidemiology Systems for American Cyanamid.

I will just kind of stay up here, Mr. Chairman, and play gatekeeper for the next set of folks we have. And thank you very much for your time.

ASSEMBLYMAN SMITH: Thank you, Mr. Bozarth.

MR. BOZARTH: Dr. Lucas?

ASSEMBLYMAN SMITH: Let me ask again that you try to speak into the microphone. Get very close to it so everyone can hear what is being said.

D R. L O R R A I N E J E A N L U C A S: Thank you. My name is Dr. Lorraine Jean Lucas and I am Manager of Epidemiology for American Cyanamid. I hold a Ph.D. in Epidemiology from the University of Texas in Houston, and I have worked in health research since 1982. My area of specialty is occupational epidemiology.

As Manager of Epidemiology, I am currently conducting five major epidemiologic studies. As well, I oversee Cyanamid's Health Surveillance Program. American Cyanamid is a research-based, biotechnology and chemical company which develops medical, agricultural, chemical, and consumer products. It manufactures and markets these products throughout the world. Our headquarters -- or world headquarters, that is -- are located in Wayne, New Jersey, and of a total of 35,000 employees worldwide, 4500 are employed in this State.

My purpose in being here today is to address the issue that "a crisis exists in the State as a result of hazards in the environment that emanate from the workplace," as stated in both the preamble of the proposed HELP bill, and also referenced in the previously mentioned Mount Sinai Report.

As an occupational epidemiologist, I find little evidence to support this theory. In contrary, the body of scientific evidence supports the fact that the work environment is, in general, a safe place. For example, the overall cancer rate in the United States has remained essentially constant between the years 1930 to 1985, while the production rate of organic chemicals has increased over two hundredfold.

Even accounting for a latency period of 15 to 25 years for cancer to develop after exposure, the data do not demonstrate any detectable cancers from these exposures. The history of cancer deaths for the U.S. indicates that decreases in cancer of the stomach, the colon, uterus and ovarian cancer mortality rates are approximately equivalent to the increase in lung cancer mortality, which is largely attributed to life-style factors, predominently cigarette smoking.

More specifically, the Cancer Institute of New Jersey and New York University's Medical Center jointly examined the cancer mortality rates for the State of New Jersey between 1950 and 1969. They concluded that the urban density of the State, which is indicative of life-style factors, was the most significant predictor of cancer rates. An example of one life-style factor is automobile usage, which alone accounts for the vast majority of air emissions. The presence of heavy petrochemical industries in the State was not a predicted factor. In fact, states that lack petrochemical industries, such as New York and Rhode Island, have cancer rates that are similar to this State's. Thus, these data demonstrate that there is no epidemic of cancer in the U.S. or in this State.

The public's perception that there is a significantly higher cancer rate today than in the past is due to several factors. Cancer has become a much more prevalent or, if you will, a more common disease and cause of death as fewer and fewer persons die of fatal infectious disease. Increased medical technology, including diagnosis and treatment of other diseases, predominently such as cardiovascular disease, has resulted in our increased life span. It is this increased longevity, or increased life span, that also allows time for tumors to develop. The result is that cancer will become an even more prevalent disease in the future. It will become, if you will, a disease of the elderly. Sixty percent of cancer deaths currently occur in persons age 65 and older, whereas only 34% occur in persons aged 45 to 64.

As I indicated previously, as Manager of Epidemiology, I am also responsible for the occupation and health surveillance of all American Cyanamid employees. Our epidemiology function was established in 1981, and is but one component of Cyanamid's Safety and Health Program, which also includes a corporate medical department, an industrial hygienist, safety engineers, occupational nurses, and in-house medical facilities at each major manufacturing location.

Cyanamid has recently completed three epidemiological, if you will, health studies of mortality patterns of over 14,000 chemical workers who are either current or former employees at five U.S. locations, including our Linden, New Jersey facility. All locations in these studies have safety and health programs similar to the one in our Linden, New Jersey plant. Each of these studies showed that our workers had mortality rates from cancer and other diseases which were no different from those of the general public, and which were no different from those of the surrounding State, local, and county general populations. Each study was peer reviewed by professionals in the field outside of Cyanamid, so as to

increase the scientific validity of the study, and each of these studies was published in the scientific literature. Employees were notified of study results -- this is a corporate policy that is followed for all studies -- as were State and the appropriate regulatory agencies.

Follow-up of these employees also continues as part of our routine medical surveillance program. In addition, Cyanamid supports and participates in larger industry studies that involve more than one company. We have also recently established a coronary health disease study to identify persons who may be at high risk of heart disease and to better design intervention strategies for our employees.

Of paramount interest in occupational health is the identification of cancer-causing agents. Well-known and well-publicized occupational carcinogens, such as asbestos, vinyl chloride, and beta naphthalene, which many individuals have previously identified today in our conversations, were identified many years ago and are now stringently regulated. The health problems associated with these materials were known to have occurred from repetitive exposure from years earlier. This delayed effect, which is known as latency, is generally thought to be 15 to 20 years for most cancer sites. Thus, the few isolated excesses of occupational cancers that are found today are largely due to exposures in the workplace prior to 1970, and reflected inefficiency of workplace controls in that era. They are not indicative of a current crisis.

Major control efforts to reduce workplace exposures have occurred since 1970, and many of the individuals before me have mentioned those. There is no real evidence that these measures, or these efforts have been ineffective. Landmark events that have occurred in recent years include: OSHA, which was established by Congress in 1970, and which has since regulated 26 human carcinogens; its sister agency, NIOSH, which was also formed by Congress in 1970, and regularly performs

health hazard evaluations and conducts epidemiologic studies; the New Jersey Right to Know Act in 1985; the OSHA Hazard Communication Standard in 1986; the Toxics Substances and Control Act, which was promulgated in 1976, with the purpose to collect data on new chemicals and to identify newly discovered effects of existing chemicals, as well as the OSHA Air Contaminant Standard which was recently enacted in 1989 and has established new exposure limits for approximately 600 chemical agents.

These various regulations cover thousands of substances both in the workplace and in commerce. Their effectiveness is attested to by the fact that cancer rates in the general population are stable, and that recent epidemiologic studies of worker populations have identified few excesses of occupational cancer mortality.

Even though there is no occupational disease crisis, health surveillance of employees can, and should always be improved. For example, in July 1988, a study from the State Department of Health entitled, "Surveillance of Occupational Illnesses, Injuries, and Hazards in New Jersey," which describes ongoing health surveillance activities, specifically emphasizes the need to utilize these data to judge the effectiveness of the State's surveillance efforts. While we specifically do not concur with the Mount Sinai Report that an occupational health crisis exists in the State, we do concur with their recommendation to improve our health surveillance systems. We do concur with the Mount Sinai recommendation to improve existing scientific data bases. Such improvement will improve the quality of data collected, and will allow us to accurately assess the extent of occupational health disease and illness.

These data are critical to designing intervention strategies and additional control measures. An example of an existing surveillance program is the State's Occupational Health Services surveillance of workers exposed to heavy metals.

Now, the question is: What should we do? For one thing, we should support programs to educate professionals in the State. Dr. Markowitz made a comment to the effect that there is a lack of occupational physicians in the State. These individuals play a key role in the identification and prevention of occupational health crises. We should improve our existing health registries, such as the State's cancer registry, which has a need to improve its percentage of case ascertainment. We should promote research projects which utilize these existing data sources and that determine the effectiveness of such programs. We should also ensure that adequate funding is appropriated to continue these existing health programs.

Now, these recommendations that I have just mentioned are reasonably consistent with most of those of the Mount Sinai Report. However, the HELP bill does not include any of these recommendations, but rather focuses on public and employee participation, included because of the false premise that there is a health crisis.

Certain recent actions seem counter to the recommendations of the Mount Sinai Report and, in fact, we pointed out our concerns in a recent letter to the Acting State Health Commissioner. These concerns focused on the recent budget cuts experienced by the State Department of Health, which resulted in the temporary termination of death certificate retrieval searches by the Vital Statistics Bureau. These services provided by the State are critical to the conduct and validity of epidemiologic research and, in fact, this decision delayed four of Cyanamid's ongoing epidemiologic studies and required us to petition the agency to resume health research contract activities. Not only that, but the halting of this service for nearly a year resulted in the costly delay of other studies conducted by academia, government, and industry, and may well have precluded the initiation of numerous other projects.

Because occupational hazards do exist and are, in general, not only well-known but are largely preventable, areas of occupational health concern should be identified and should be addressed in comprehensive statewide programs. The State of Louisiana has worked with the Chemical Industry to identify and address health data gifts specific to its geographic region. One of these projects included the computerization of cancer incidence data that impacted not only on State cancer rates, but on national rates as well.

The State of New Jersey should do the same. Cyanamid is willing to be an active participant of such collaborative efforts. Our workers deserve the best protection we can provide. They deserve to work in a State whose occupational health activities reflect those of a comprehensive statewide surveillence program that is targeted toward the detection and prevention of occupational disease, one that utilizes existing health registries and data sources. They do not deserve to be told that a health crisis exists in the workplace, a theory that is refuted by much scientific evidence.

I thank you for your time and your attention.

MR. BOZARTH: Thank you, Mr. Chairman. Next with me is Dr. Dan Thomas, from Hoechst Celanese Corporation -- the Occupational Health Director.

D R. D A N I E L T H O M A S: Thank you, Mr. Chairman, for the opportunity to address the Committee. I am a practicing physician in the State of New Jersey. My training is in medicine, I hold a master of public health from Harvard University, and I am board certified in preventive medicine. My employment is as the Corporate Medical Director for Hoechst Celanese Corporation, which is a worldwide operation with many facilities all over the United States.

I am involved in the full-time practice of occupational medicine through that employment. I am also the Program Chairman for the Occupational Medical Association of

New Jersey State Library

New Jersey. My remarks are fairly limited and designed mainly to complement, from the clinical occupational medical point of view, the observations that have just been developed, from the epidemiologic point of view.

One of our vital concerns is the validation of the report submitted by Mount Sinai. A major contribution to the mortality was the estimate that 10% of all the cancers in New Jersey were due to occupational exposure between 1985 and 1987. This is a very important estimate. It is essential for the effective practice of occupational medicine to validate that estimate. Many resources can be misused or misdirected if that estimate is incorrect.

I would like to also point to the report which indicates that about three-and-a-half million workers -- that there are about three-and-a-half million workers in the State of New Jersey, and the population is roughly about seven-and-a-half million people. The high-risk industry, that is the top most hazardous 50 industry codes, are given in the report to have approximately 390,000 workers. On the presumption that these people are at highest risk for occupational exposure, and particularly for occupational cancer, you would have to assume that all the excess cancers were coming from this high-risk group, which only constitutes 10% of your working population, and only 5% of the State. It would be very difficult for this group to account for 10% cancer incidence through the entire population. It would mean that that group -- that all of their cancers were due to occupational exposure.

This does not coincide with our experience in occupational medicine. It is not the experience that is being reported through various epidemiology studies. It is not what we are seeing in our health monitoring program. It is not what we are seeing in our benefits data.

It is a vital issue for a corporation like Hoechst Celanese because we are self-insured medically. We pay for the illnesses of all of our employees, regardless of the source, and that is a major motivator in our efforts to promote the health of our employees from all causes. They are a vital asset to the corporation. Their continued good health through their entire productive lives is very important for us. Every time someone becomes ill for any cause, we lose, not only because we pay their medical bills, but we also lose the productivity.

However, the recommendations in the Mount Sinai Report are recommendations that are commonly held by the occupational medical community. There is a prior report which I would like to refer to the Committee. It is entitled, "The Role of the Primary Care Physician in Occupational Environmental Medicine." This report was prepared by the Institute of Medicine, and it reflected on the status of occupational medical practice in the United States. It clearly set forth the shortcomings in that area in terms of the number of skilled practitioners, and it made many recommendations with regard to how to strengthen the practice of occupational medicine.

Those recommendations in the Mount Sinai Report that proposed this, and also the improvement of industrial hygiene programs are supported by industry and are supported by the practice community. We feel that they are very helpful with regard to enhancing and increasing the availability of good services to our employees.

One of my responsibilities as the Medical Director is to seek out, in the community, practitioners who are knowledgeable in the area of occupational medicine who can provide diagnostic services and care to our employees. So we need these people. We need the academic communities which generally do the research in this area, and we need the Department of Health resources that are dedicated to looking at

the incidence and prevalence of occupational disease, in order to properly focus our programs.

My further comment is that the HELP legislation, as it is currently structured, I do not see strengthening the practice of occupational medicine or the availability of industrial hygienists which are vital to the two major things that we do: attempt to properly reduce exposures to our employees, and try to assure, by follow-up evaluation of their health, that they are not being affected by any residual exposures. These are two of the vital areas we are interested in promoting. We have been involved, through the Chemical Manufacturers Association, through the Organizational Resource Counselors, and through our sister industries, in supporting current initiatives within OSHA to provide generic health monitoring and generic medical surveillance for all workplaces throughout the United States. This is the regulatory approach that we feel is appropriate to deal with whatever residual disease we currently have existing in the workplace.

Thank you very much.

ASSEMBLYMAN SMITH: Thank you, Doctor. Mr. Bozarth, before you bring anyone else up, I think that after your group is finished -- and you have approximately another 23 minutes for your hour to be over with-- At the end of that two-hour segment, our Assembly members and Senate members are biting at the bit to ask questions. I have asked them to hold their questions because we wanted everybody to get a chance to get their particular case on. I hope speakers on both sides of the issue will stay here, and upon the completion of your group's testimony, I am going to open it up to some questions from the Committee members.

Mr. Bozarth, do you have another witness?

MR. BOZARTH: Yes, I do. Thank you both, Doctors. Mr. Wentzell, whom I also had ready to testify, who is the Deputy Coordinator for Emergency Management in Salem County,

had to leave. He will submit his comments in written fashion within the next two weeks, as per your request. He was going to tell you what emergency management services are out there, how they work, and how they respond to the potential problems that exist.

Next I would like to call Mr. Rick Tabakin, who is the Plant Manager at the Linden facility that Dr. Lucas talked about for American Cyanamid. We are trying to speed up and be as brief as we can.

ASSEMBLYMAN SMITH: You're doing fine.

MR. BOZARTH: Mr. Tabakin, as Plant Manager, is going to explain to you the kind of precautions that he takes for worker safety and protection in the environment, among some other things. And I think he has a statement that he will give you.

R I C H A R D B. T A B A K I N: Thank you. My name is Rick Tabakin. I am the Plant Manager at American Cyanamid's plant in Linden, New Jersey. My educational background is, I have a bachelor's degree in chemical engineering, and a master's degree in environmental engineering. I have 19 years of varied environmental experience, which includes four years working for the Federal EPA, as well as working for the American Cyanamid Company for a number of years. For five years I was the Manager of their Corporate Environmental Affairs Group.

I would like to make this presentation in two parts. Since there is a lack of time, I am not going to go into a lot of detail, but I would like to make some up-front statements. I must start off by stating that I don't agree with the underlying assumption of the bill; that is that there is a crisis in New Jersey as a result of the hazards in the environment that emanate from the workplace.

Several individuals have already testified on that matter. I will address my comments to both the areas of worker

and workplace safety, as well as community health and relations. We have a very effective safety program at our plant, as well as throughout Cyanamid. Many of the elements of the worker and the workplace safety portion of the HELP bill are addressed in our existing safety program. It is a proven and effective program based on real numbers, as you will see in the testimony. This is a comprehensive employee and process safety program consisting of 15 specific elements for which I am responsible, and for which I have the complete support of my upper management. Details of the program, as I mentioned, are included in the submission.

Let me say that the proof of the program's effectiveness is in its results. The Linden plant of the American Cyanamid Company, as an example, has not had any lost time injuries since 1984. I believe that our CORE Safety Program more than adequately addresses the area of worker and workplace safety.

I do believe that we can do better, and I do believe that improved worker training is a key to improving worker/workplace safety. The hazard prevention advocates created in the HELP bill are not required to have any expertise, training, or background in the area of safety or process operations. This presents a real potential danger; asking inexperienced, untrained, and unqualified individuals to make decisions regarding worker and workplace safety is inappropriate. I believe that existing employee/management safety committees are much more effective. Given the tremendous differences that exist at facilities covered by the HELP bill, I think it is a mistake to set up rigid requirements for such programs.

I do not disagree that such programs should be required, but I do not believe that rigid requirements should be established. Let's not set up a whole new program with its own set of rules and regulations, and ignore existing

programs. With few exceptions, existing safety programs work very effectively and should serve as a model for those facilities that do not currently have such a program.

I also think that the Local Emergency Planning Committees established under SARA should be given a chance. These committees include representation by employees and the community and can serve most, if not all, of the objectives of the HELP bill. Let's build on what is already in place, before we create another program.

I think it is important to address funding of the LEPCs, and I support legislation that would establish a viable, long-term funding mechanism for the operations of the LEPCs. With adequate funding, I believe the LEPCs can help to improve worker/workplace safety.

Let me touch on another area under worker/workplace safety before I address the community health and relations area. I believe we need to improve the existing OSHA program for worker/workplace safety. Under existing OSHA regulations, any employee may notify OSHA of what he perceives as an unsafe condition, and OSHA is required to follow-up the notification with an inspection. This is OSHA's highest priority. Unfortunately, many workers do not know they have this right, nor are all workers properly trained to recognize unsafe or dangerous situations. I believe we should ensure that workers know that they have a right to OSHA inspections, and workers should be trained to know what to look for. With better informed workers, we can't help but make a safer workplace.

Let me turn briefly to community health and relations. As I said at the outset, I do not agree with the underlying assumptions of the HELP bill; i.e. that there is a crisis. Dr. Lucas has testified on this, and we in industry, especially in the chemical and petrochemical industry, do suffer from the perception that a crisis exists. In this regard, I believe we need to improve our community relations

programs. I am not talking about superficial public relations efforts. I believe we need a meaningful interaction with our communities to understand their concerns and to address them. I do not believe the HELP bill will accomplish this. In fact, I think the programs created in the bill will detract from effective community relations by misdirecting activities.

We will be forced to ensure compliance with procedural requirements of the Act and will be wasting time and resources on paperwork. If you truly feel that the enforcement of existing programs is not effective, let's correct that problem by giving the appropriate State agencies the resources to enforce these programs. Let's not "deputize" untrained and unqualified citizens to inspect our facilities. If you want to mandate that we create citizen organizations to serve as the vehicle for communications with the public and that we have regular meetings with these groups to discuss and review our operations, that's okay, and we will support that. But giving such groups the authority to close down our operations -- and this bill would do just that -- is simply not justified.

ASSEMBLYMAN SMITH: May I have order? I'm sorry. There was some snickering back there, and that is out of line. Let's keep order and show courtesy to everyone.

ASSEMBLYMAN ALBOHN: The snickering can go both ways, you know. I think they should recognize that.

ASSEMBLYMAN SMITH: Absolutely. Go ahead, sir.

MR. TABAKIN: I am not opposed to programs that would improve worker/workplace safety or community relations, but I am opposed to programs that are not only potentially disruptive of our operations, but more importantly, will detract from implementation of effective safety and community relations programs by misdirecting our efforts into complying with a new set of paperwork requirements. Let's stop playing politics with this issue, and use our resources more effectively.

As I mentioned, in our submission I have indicated the details of Cyanamid's CORE Safety and Responsible Care Programs. It is pointed out in this that from a historical perspective, even before SARA and TCPA came into place, Cyanamid had a program that had all of these elements in place. It had safety and loss prevention standards. We had emergency response, both on an internal and an external level, and these programs were audited. We did have community involvement. For example, we were involved in joint drills with the Linden Fire Department. We brought the Fire Department in to tour the facilities and understand our operations, and we participated in the Linden Industrial Mutual Aid Council.

Since SARA and TCPA, which have been major factors in improving our safety programs and our interaction with the communities, chemical inventory reporting has gone into effect under SARA. We have made numerous presentations to the local community, which includeed civic groups, church groups, and the public.

We have had community-wide drills in the Linden area in Union County and in surrounding communities, and have developed mutually with the LEPC plans for what to do in case of an emergency. Risk management programs have been formalized under TCPA, and they have been reviewed by the NJDEP. There has been community interaction with HMACs -- Hazardous Materials Advisory Councils -- that have been formed in many of the counties of the State, and also offer a forum for the public, as well as administrative and response people in the community to be involved with industry.

We have been very, very active in the LEPCs. We have had open houses. We have invited the community in to tour our plant and understand our facilities. We have had community newsletters telling the community about who we are, what we do,

and why we think we are doing a good job. We have also started participating in the Responsible Care Program.

Again, I would like to make this submission. It has a lot of details of what specific actions we are taking on both programs. I think you will find it of interest.

Thank you.

ASSEMBLYMAN SMITH: Thank you, sir.

MR. BOZARTH: Mr. Chairman, I know I am losing some of my minutes here, but I want to bring up next Vincent Gioia, who is a chemical operator at the DuPont Deepwater facility, and also Bob Gould, from Huntsman Polypropylene Corporation in Gloucester County. He is an Executive Board Advisor to the Gloucester County HMAC, which is Hazardous Materials Advisory Council. Bob, if you will come up. We will let Mr. Gioia talk about what his facility's operations are in this area, and then if you would, you can talk about the HMAC that you are involved with.

V I N C E N T G I O I A: My name is Vincent Gioia. I live in Carneys Point, Salem County. I am employed by E. I. DuPont Chambers Works, in Deepwater, New Jersey.

I am an operator of a "permitted" hazardous waste incinerator. My other job responsibility is to ship hazardous materials off-site, either for incineration, recovery, or reclamation. I have been in the hazardous waste field for 17 years. I am a member of the Chemical Workers Association and have been for my 19 years in DuPont. I don't always share the views of management or the union. I was asked to read, and comment if I wished, on the proposed legislation.

These are my views and these are based on my experience in the hazardous waste field. My comments are directed to inspections and audits.

We are audited at the chemical waste management area and secure landfill approximately two to three times a week by New Jersey DEP enforcement personnel. They review everything

from the material we are incinerating to the waste characterization forms of each component stored on our drum pad. They review and monitor our performance. If we are out of compliance, we are issued a Notice of Violation. This summons is issued at the local municipal court. I have sat down with the inspectors and went item by item producing the proper inspections, analyses, training records, and incinerator parameters during such visits. We have also, on occasion, removed drums from our landfill and sampled to see if they contained the material they said they did. Our emergency and disaster plan has been reviewed. Hopefully, this plan will not be put into action quite often.

The local fire marshal inspects the area at least twice a year. His requests are usually carried out, or a better way may be suggested to him to meet the National Fire Code.

We have procedures for every job we are required to do. Safety and health items are the first things addressed in any procedure. Personal protective equipment and health concerns can be found in these procedures, or on the Material Safety Data Sheets which we have access to. If something is out of the ordinary, a process hazard review and a test authorization are required before the job can be started.

There are various management audits performed weekly. Different safety items are audited each week.

OSHA and the Federal Environmental Protection Agency audit our area also, but I don't recall the frequency.

Management and wage roll personnel are involved in all the inspections I have mentioned. It is my opinion that these people are the best qualified to do the inspections and that the amount of audits are more than enough to ensure worker safety. These audits I am speaking of are done in my area, and I can only speak for it.

All employees must know the hazards the chemicals they are working with will have on their bodies and the environment around them. OSHA ensures safe working conditions, and acts upon complaints. It is the responsibility of the employer and the people involved to know all the proper hazards. It is the responsibility of the employer or the company to be sure the surrounding communities know of the hazards around them.

Thank you.

ASSEMBLYMAN SMITH: Thank you.

MR. BOZARTH: Bob Gould, Huntsman Polypropylene.

B O B G O U L D: Hi. Bob, I am supposed to say hello to you from Jack Collins. He is trying to fight that teacher battle. I am from the first district down there where our Governor is from also. It has been my honor to work with Assemblyman Stuhltrager, Jack Collins, and James Florio.

ASSEMBLYMAN SMITH: Would you please move the microphone fairly close? The people in the back are giving me all kinds of signals.

MR. GOULD: Yes. It has been my honor to work with Assemblyman Stuhltrager, Jack Collins, and also Governor Florio, coming from his district. Back in '74 I worked with him to write the EMS legislation that has been in effect, the original EMS legislation.

My honor today is to talk about the LEPCs and what is going on positively in New Jersey. My distress is the name of the bill -- HELP. That should be on a bill sponsoring volunteers in the State of New Jersey, because that is where we need the help, not in LEPCs at this time.

The local emergency managing system in the State of New Jersey was signed into law late December, and working in conjunction with them since early 1985, DEP, the local emergency management, all the fire fighters, all 54 fire departments in Gloucester County, 30 ambulance squads, and all the other agencies, and I am talking about from DEP and the

agencies that are environmentally oriented to the agencies that are representative of the public-- Every meeting that we hold is open to the public. It is a working group which represents 90 different groups. Industry is only a facilitating part of the organization.

What we are pleased to report is, after five years of work -- in its Evergreen process it is never going to cease -- we have been able to produce educated emergency responders, educated public, educated chemical workers, and educated employees. Our employees are our fire fighters in Gloucester County. Our employees are -- as myself, a 27-year veteran of the fire service, a 20-year officer in an EMS organization and founder of an EMS organization, and a current officer -- volunteering our services to help the community. That is what we have in Gloucester County; that is what is going on.

We are addressing these issues that you are already addressing. We have considered everything that you have done in the FEMA legislation, when Governor Florio was a Congressman, and the CEPP Act was being renegotiated and rewritten to come up with SARA III legislation. Gloucester County had the honor to have major input into that legislation. They modeled a lot of the plan, and we were already in compliance in Gloucester County when SARA III went into existence. The only thing we had to do, when the New Jersey State Police-- By the way, we have to compliment the Office of Emergency Management and Lieutenant Tom Davies and Major Craparotta, who have been essential in working with us, and a valuable tool, and also Bruce Comfort in DEP in their Emergency Response Section, who has been vital-- These people are resources that will come down and help the Local Emergency Planning Councils at any time. We have found them to be there at all times.

Actually, the first time the piece of legislation was put in last year, we found it to be so redundant that we didn't

even think it would make it to committee, that it would sort of just die. That piece of legislation was so redundant to what was going on, that it was just going to die. So we ignored it in Gloucester County. By the way, Gloucester County in southern New Jersey has the highest concentration of industry, and has continually done this long before any legislation, SARA III or any of these legislations, were put into place. We have a long history, probably for the last 15 to 20 years, of working with the community fire departments, the community Office of Emergency Management, the EMS agencies in the community in general.

With the new initiatives that are coming down the road, I'm sure you are hearing about the CAER Program that was the incentive for forming the Hazardous Materials Advisory Council. By the way, our Hazardous Materials Advisory Council is a resource -- and I want to make sure that you understand this -- for all 24 municipalities in our county. We provide everything from fire fighting resources to technical resources to their industrial hygiene specialists to epidemiologists, whatever resource we can possibly do. We do any funding we can possibly do. We have also provided an extensive cooperative training program, to make sure that people understand how to deal, not only with hazardous materials-- People confuse, a lot of times, hazardous materials with the hazardous waste issue, and we do not like to be associated with that.

Recently, New Jersey was selected as one of the sites out of three in the nation as an example in Transcare. The transportation industry, which isn't even addressed in this piece of legislation, has probably the greatest potential of any hazard that we have been able to identify, from any fixed site facility or in any other way.

The legislation, at this point, is totally redundant. We are looking to work with you in improving it, and we look forward to its success in Gloucester County. I appreciate your

time here this evening, because I think you are going to hear a lot of comments pro and con.

We have a working system at this point. The only help we need is help to be able to find volunteers. So, if you can figure out how to find the volunteers -- I am talking about volunteer fire fighters, volunteer EMS personnel-- That is where we're hurting in the State of New Jersey.

On the side bar, I work for Huntsman Polypropylene Corporation. I am also the corporate Huntsman Chemical CAER Coordinator. I have been traveling worldwide at our President's request, to try to help the rest of the nation. New Jersey is so far ahead on the LEPC and the Hazardous Materials Advisory Council, that we try to help our 10 facilities throughout the nation to come up to standard.

Gentlemen and ladies, we have something to be proud of in New Jersey. Our emergency management system, our DEP, our working agencies, which are out there doing their jobs. When I go out to these other states, it dismays me to see that they are five to ten years behind us. Don't put any more encumbrances on New Jersey that are unnecessary and uncontrollable and unregulatoriable. (sic)

Thank you very much.

ASSEMBLYMAN SMITH: Thank you. Mr. Bozarth, that is approximately an hour. In fact, that is an hour.

MR. BOZARTH: That is an hour, and I appreciate your time, Mr. Chairman. We do have--

ASSEMBLYMAN SMITH: Do you have some other people to speak?

MR. BOZARTH: We have two other folks. I don't know how you want to handle that. Do you want to do it after the questions?

ASSEMBLYMAN SMITH: We are going to continue with that shortly. But I know that Assembly and Senate members have been chomping at the bit to ask some questions. We have had 14

speakers already. So, while the questions are fresh in our minds, I know we want to ask them.

I have some questions for Dr. Thomas, Dr. Lucas, and Dr. Markowitz. If they are present, maybe they could come forward. (witnesses comply) And if the first 14 speakers would have themselves at the ready, we would appreciate it.

I have to say to the good doctors that your testimony was 180 degrees different. One of our functions is to try to figure out what the actual situation is in the State of New Jersey with regard to occupational health, so let me start with Dr. Markowitz.

Dr. Markowitz, you presented to the Committee a study entitled, "Occupational Disease in New Jersey; a Report to the New Jersey Department of Health." This study was commissioned by the New Jersey Department of Health?

DR. MARKOWITZ: Correct.

ASSEMBLYMAN SMITH: And they paid for it, they paid the freight on it?

DR. MARKOWITZ: Correct.

ASSEMBLYMAN SMITH: Do you have any idea what it cost us -- cost the State?

DR. MARKOWITZ: It cost $32,000.

ASSEMBLYMAN SMITH: Thirty-two thousand dollars. I notice in your acknowledgements that there is an acknowledgement of gratitude to the New Jersey Department of Health, and especially to Molly Coye, our former Commissioner of the Department of Health, for being so interested in the occupational area.

When the study was presented-- When the request for proposal was presented to Mount Sinai, was there any suggestion in the request for proposal in terms of a bias? Did they say to you, "We want a crisis found in the State of New Jersey in the workplace"?

DR. MARKOWITZ: No. No one suggested to us what results we should find.

ASSEMBLYMAN SMITH: Okay. This represents your best understanding of the frequency of occupational disease in the State of New Jersey?

DR. MARKOWITZ: Correct. We had done a similar report for New York State, which resulted in the report some two years before this one. So, certainly the New Jersey Department of Health knew what it was asking for.

ASSEMBLYMAN SMITH: Right. Mount Sinai is not politically affiliated; it is a nonprofit corporation -- medical facility. Correct?

DR. MARKOWITZ: Correct. It is a medical school in New York City. It is certainly a nonprofit institution. We are a major center for research, patient service, and education in occupational and environmental health.

ASSEMBLYMAN SMITH: All right. There was a question presented by Dr. Lucas and Dr. Thomas regarding your assumptions, especially the 10% assumption with regard to -- I believe it was occupational cancer. I looked at the study while they were speaking, and you refer for the basis of that assumption to Appendix A. Appendix A has 22 citations to the occupational health literature of this country, by the occupational professionals of this country. What was the basis for that assumption, and do you feel, after listening to Dr. Thomas and Dr. Lucas, that that assumption was scientifically valid?

DR. MARKOWITZ: I certainly feel that it is scientifically valid. I didn't really hear any specific arguments or data presented against the 10% figure. The type of overall time trends that Dr. Lucas referred to of cancer not increasing in general over several decades, or cancer rates between the states, that is not an argument against specific numeric contribution from occupational considerations.

I think that Dr. Thomas was absolutely right. That 10% figure is an important figure. Many of our conclusions are based on that figure. Let me say why we chose 10%. In the literature, the percentage of all cancer due to occupational factors ranges from 4% to 38%, if you go back to the late '70s and early 1980s. We thought 38% was a wildly high figure, and we thought that 4% was a very cautious figure.

There has been data in the last several years concerning the occupational contribution to cancer. We looked, for instance, at lung cancer, which is the number one cancer in the United States. There was a study completed in 1986 by the New Jersey Department of Health, done in conjunction with the National Cancer Institute, which looked specifically at people, males in particular, with lung cancer in six populous counties in New Jersey. They determined that 15% -- that in 15% of these lung cancer cases, there was an occupational contribution, and that these 15% represented the contribution from just five occupations. So clearly 15% for lung cancer, specifically for males, is the lower end of a range of estimates.

There have been more recent studies, specifically of lung cancer, which show that anywhere from 20% to 35% of lung cancer -- the number one cancer in the United States-- In 20% to 35% of those lung cancers, there is an occupational contribution. So I think that the 15% for just five occupations in New Jersey is a low figure, and it is more reasonable to say that in probably 25% of lung cancer cases in males, in this State, there is some occupational contribution. Since lung cancer is the number one cancer -- it constitutes approximately 20% to 25% of all cancer cases -- if you simply multiply those out, you get approximately 5% to 6% of all cancer in this State produced by occupational factors, as accounted for only by lung cancer. That does not include occupational bladder cancer; occupational leukemia; or any of the other cancers.

So that is why we used the figure of 10%. We thought it was--

ASSEMBLYMAN SMITH: Ten percent is conservative, is what you're saying?

DR. MARKOWITZ: I think it is a reasonable figure.

ASSEMBLYMAN SMITH: It's a reasonable figure, right.

DR. MARKOWITZ: Conservative, I'm not sure, but it is a reasonable figure.

ASSEMBLYMAN SMITH: I notice in the acknowledgements in the study the representation on the Advisory Board for the study of Bayway Chemical Plant, the Exxon Company, the Hoechst Celanese Corporation, the New Jersey Medical Society, the Liberty Mutual Insurance Company, NIOSH, OSHA, Merck & Company, and the Centers for Disease Control. I would imagine that the study was circulated to all of these, and that the Advisory Panel reviewed the study and had an opportunity to comment upon it.

DR. MARKOWITZ: Certainly.

ASSEMBLYMAN SMITH: And were there outcries from the representatives of industry and government that these figures were unrepresentative or unrealistic?

DR. MARKOWITZ: Not really. In fact, there was very little discussion. We would welcome discussion of the scientific issues, but there really wasn't much in the way-- There really wasn't any criticism about these assumptions.

ASSEMBLYMAN SMITH: All right. I am going to let you react, in case I have missed any points, to the criticism that the Mount Sinai Report came to incorrect conclusions about the extent of occupational illness and injury in the State of New Jersey. Is there anything else you want to say about those allegations?

DR. MARKOWITZ: Well, let me just respond to the issue of life-style and its contribution to cancer. There is no question but that the majority of cancer is produced by

nonoccupational factors. Cigarette smoking is the number one cause of cancer. If we say that 10% of cancer has an occupational contribution, then obviously 90% doesn't. So, the vast majority of cancers are not produced by occupational factors. I totally agree with that. I totally agree that people should not smoke cigarettes, engage in unhealthful behavior that leads to cancer, and should go to their physician for regular checkups.

I don't think there is any real opposition -- necessary opposition -- between an argument which proposes that life-style factors are more important as opposed to an argument saying that occupational factors are more important. In my mind, these are both preventable factors which should be diminished. If this were legislation concerning cigarette smoking, then--

ASSEMBLYMAN SMITH: You would be equally supportive.

DR. MARKOWITZ: Well, the discussion should really focus on that. Otherwise, I really have no-- Oh, there is one specific thing: It was mentioned that the Mount Sinai Report reported that there was a crisis. I wrote much of the report, and I, frankly, cannot recall ever using the word "crisis," and yet it was quoted that we said that. I don't believe we ever used that word. To the contrary, I think this is quite an ordinary situation, in that it goes on year after year. Now, it is true that we are paying for the sins of past years; that the issue of 20 years of latency, meaning time from exposure to development of disease, means that the current cancers we are seeing, and most of the other chronic occupational diseases, result from exposures in the 1940s, '50s, and '60s. And hopefully, the current exposures, which are certainly in a significant number of establishments, are undoubtedly lower and will result in many fewer cancers and other diseases.

There is no question that in the larger establishments, the workplace is cleaner than it was decades

ago. Hopefully, it is cleaner also in the smaller and medium-sized establishments. The caveat to that is the OSHA data which is in our report from the early 1980s, specifically concerning silica and lead, which show that there is still routine overexposure to those agents. These particular agents don't lead to cancer, but they can cause chronic occupational diseases.

So there is ongoing overexposure which is of concern. I don't believe it will lead to the same level of disease as we are currently seeing, based on exposures from the '40s through the '60s.

ASSEMBLYMAN SMITH: Dr. Thomas and Dr. Lucas, first of all, can you cite in the study where there is a statement that there is an occupational crisis in New Jersey?

DR. LUCAS: Yes, we can, but not in the context in which you want a timely response. Okay?

ASSEMBLYMAN SMITH: All right. The record will remain open, and we will expect a letter from you.

DR. LUCAS: Yes, okay, that's fine. First, I would like to indicate that I don't think it is unusual between two scientists to vary in their opinion through such disparate disagreements, if you will. I don't think that is unusual. I concur with everything that Dr. Markowitz has just indicated. I think what you have to understand is that many disease processes are unknown to us. Getting a handle on what causes disease and how to prevent it is questionable and, if you will, such estimates will be disagreed upon by experts. But it is important to understand the limitations of those estimates and of the data bases. I think those were clearly pointed out.

Again, with reference to some overexposures in occupations, I think what is critical then is to address those individuals, to address those workers, to identify those places where you can actually make an impact on health, and I think again, to reiterate the lead-exposed workers and the State's interest in developing a surveillance system.

DR. THOMAS: Mr. Chairman, I would like to go back to one of the comments you made, which basically asked if this report was reviewed. There was one meeting of the Advisory Committee, as far as I know, having talked to people on it. None of the representatives from Hoechst Celanese happened to have attended that meeting. And, you know, that is our problem.

ASSEMBLYMAN SMITH: That shows the importance of attending meetings. (laughter)

DR. THOMAS: Yes, I stand chagrined. Anyway, I certainly recognize the importance of the report. As a matter of fact, I have been in close discussion with Dr. Markowitz about the report, mainly through my interest as the Program Chairman for the Occupational Medical Association of New Jersey. I feel a little left out for that Association, in the sense that there was no member from that Association on the Advisory Committee. I think there should have been.

On the other hand, to try to focus this with that group, I have asked Dr. Markowitz to address one of our meetings which is coming up in March. I have recently written a letter to all the membership of the Occupational Medical Association, pointing out how important it is to look at this report, and to form their own opinions and ask their own questions with regard to the true prevalence and incidence of occupational disease in New Jersey. It is critical; it is the very lifeblood of our organization.

But I cannot tell you, obviously, whether this dialogue is going to go on at the academic and scientific level maybe long beyond how long this Committee may be around. It is going to go on for quite some time, I am sure.

My specific concern about this is the 10% estimated in the area of cancer, because you have to keep in mind that Dr. Markowitz is citing all the cancers in New Jersey. One of the questions I would ask is, of those people who had cancer during 1980 -- or died of cancer between 1980 and 1987 -- were they

even working in industries that were at risk, or should the 10% estimated be applied against the entire population? We only have, at the present time, 396,000 people working in what we call the "50 most hazardous industries." If I were looking for cancer incidence high rates there, I would look in those industries.

We have seven-and-a-half million people in New Jersey. Now, taking the presumption that it is from these industries that the occupational cancers would come, we have to get 10% of all the cancers out of only 5% of the population in the future. Therefore, I don't know how to apply this estimator to our future problems with occupational disease. It just doesn't seem to make sense within the numbers in the report, the way I am reading it. These are the kinds of questions that I think we will be developing within the occupational medical community.

ASSEMBLYMAN SMITH: That figure was 396,000?

DR. THOMAS: Well, that is what is in the report. I am just using the numbers in the report to try to look for internal consistencies within the report.

ASSEMBLYMAN SMITH: Let me ask-- Let me put this as sensitively as possible, all right? One of the problems I have, as a member of this Committee listening to the clearly controverted testimony of both groups of medical experts, is that on the one hand we have Dr. Markowitz who is doing a study, or leading a study at Mount Sinai, which, as far as we can tell, has no ox to grind, or ox to gore, or ax to grind-- I got my metaphors all mixed up there. On the other hand, unless I misunderstood the introduction of the two of you earlier on, you are both employees -- medical professionals of the industry, and it would seem that you might have an ax to grind.

Let me ask: Did your employers ask that you take this study and find problems with it?

DR. THOMAS: The employers have not asked that I take this study and find problems with it. My invitations to Dr. Markowitz took place well before I even knew there was HELP legislation in the mill, just as did my responsibility as a physician working within my peer group, which is the Occupational Medical Association of New Jersey. My first knowledge of this legislation was last week, when I happened to be on vacation -- not the first knowledge of the legislation, the first knowledge of, you know, did I have anything to say about it. I looked through the report. I had already read the report prior to this and had referred it to our entire community, and asked them to get a hold of the Department of Health and get a copy of the report, if they didn't have one; read it, and be prepared to comment on March 21. All this took place before I even knew there was legislation forthcoming.

The other issue is, when you talk to me about the company, one of my responsibilities is to deploy the health assets of the company. We want to chase those things which we feel will have the best bottom-line inpact in improving the health of our employees. We do not want to chase disease incidence which may or may not be there. We have spent a considerable amount of resources in our Preventive Medicine Programs. We have periodic health assessments. At many of our sites, we are developing wellness programs. These people are being given cardiovascular risk analyses, etc., etc., and we have a certain amount of money. How best to use that money is a very real year-to-year responsibility that I have to discharge.

I have to make recommendations to management on what disease incidence to chase. Truly, if we had an epidemic of cancer that was work related, it would be absolutely essential to use that money in that area, if we found that in our company. We are presently conducting three ongoing studies in the area of cancer causation from the chemical industry, which

we will probably continue to run for years, just following cohorts of people because of prior exposure.

ASSEMBLYMAN SMITH: Doctor, the group you are with-- Would you please cite the name of it one more time?

DR. THOMAS: It is the Hoechst Celanese Corporation.

ASSEMBLYMAN SMITH: No, no, not your employer, the medical--

DR. THOMAS: The Occupational Medical Association of New Jersey.

ASSEMBLYMAN SMITH: All right. With respect to that affiliation, we have a number of witnesses here today from DuPont and from American Cyanamid, and I have had a chance to investigate their particular occupational safety programs in some detail. Even in my own study, they seem to have an exemplary occupational safety and health program. But, there is a spectrum-- Would you not agree that there is a spectrum of occupational safety and health programs across the industry, where on one hand you may have a company that is unbelievably responsive, but the other side of that spectrum is that you may have irresponsible companies?

DR. THOMAS: I think, without accusing anybody of anything, obviously there is a spectrum.

ASSEMBLYMAN SMITH: Do you have any idea, in terms of the chemical industry in the State of New Jersey, where companies fall in that spectrum?

DR. THOMAS: That would be difficult for me to answer. The only way I can answer this is, there are two pieces of rule making within OSHA that I have been involved in commenting on: One is generic health monitoring, and the other is generic exposure tracking. We have strongly supported this initiative. We would like to see a level playing field in the area of health promotion, so that this is not a competitive factor between companies.

ASSEMBLYMAN SMITH: Like, everybody would have the same requirements.

DR. THOMAS: We would like everybody to abide by good standards, and that this not be a competitive factor between companies. It is just not fair that a company gets an advantage by having a poor medical program -- a cost advantage. Okay?

ASSEMBLYMAN SMITH: Thank you, Doctor.

DR. THOMAS: That is what we're after, and we have supported OSHA. That is one of the driving economic factors in my mind to supporting that OSHA initiative, and we would like to see that.

ASSEMBLYMAN SMITH: All right. Dr. Markowitz?

DR. MARKOWITZ: I would just like to make two comments: One is, to testify on behalf of Dr. Thomas' good character, I would be highly surprised if his comments here were based on parochial interests. I think he is raising reasonable scientific questions, and these should be discussed at that level. The issue of how you go from 400,000 people at risk to 10% of cancer-- Frankly, there are 30,000 cases of cancer -- of all types of cancer in New Jersey each year, and 10% of that is 3000. So we are talking about 3000 new cases of occupational cancer per year in the State. It is easy to see how that comes from several hundred thousand people.

However, there is no reason to believe that cancer is restricted to the 50 most hazardous industries and, therefore, the idea behind presenting 100,000 to 400,000 as the number of people in 50 hazardous industries was really a summary figure, and the list actually goes on longer than that.

I might also point out, as we did in the report, that in the '60s, 50% of workers in New Jersey were involved with manufacturing. Presumably, that is where some of the heaviest exposures to occupational carcinogens occurred. Currently, less than 25% of New Jersey workers are involved in

manufacturing, so it is not at all surprising that as a legacy of conditions in the '50s and '60s, you would see a fair amount of cancer here due to the occupational distribution in the '60s compared to the current trend.

ASSEMBLYMAN SMITH: I appreciate your comments. I have monopolized the questioning long enough. I guess I should defer to the Senate first. If Senator Contillo has questions of any of the 14 first speakers, he is more than welcome to ask those questions at this point.

SENATOR CONTILLO: Well, it is a question, I suppose, of both of you, but I will direct it to you, Dr. Thomas. How do you deal currently with the question of a cluster and whether it be where a person lives or where a person works, which, of course, the major corporation should be a comparatively easy task because of your records?

DR. THOMAS: We recently had a cluster, and it was on our methylene chloride study. This was a follow-up of methylene chloride exposed workers in North Carolina. The first thing that happens-- We had been pursuing the methylene chloride issue for years and years because of some toxicological information that this might be carcinogenic in humans, and we had a cohort of all our people exposed at one particular plant in the Carolinas.

The results of that study-- When we found the cluster, it consisted of three cases of biliary cancer, which is an extremely rare cancer. We would have expected one, so we were dealing with a very small number situation. The first thing you have to do by law is to report that information to the EPA, which we did. The second thing we do is to try to determine if there is another similarly exposed group that we can independently test to see if we can verify that finding.

The thing is, then you are committed to follow that cohort, basically until most of them die, and that may take 20 or 30 years, to determine whether or not it is a valid

finding. This information has been discussed in the international community, and we usually advise other companies that are using methylene chloride of our findings.

But I think the EP -- what they call the, "8E" regulations, which require you to report these findings, basically assures its rapid dissemination, and we usually follow up by making the information available by invitational type meetings. But now we are committed. I mean, we follow these people. That is how we deal with the cluster. We've got three cases. Are we going to have more? I don't know. Does it really mean that methylene chloride causes biliary cancer? I don't know. But it raises an index of suspicion, and we have to deal with it. That is basically a case history of our most recent experience in this area.

DR. LUCAS: I would like to add a comment to that. I think what is important to do is to address the community's concerns. Many times a cluster will be identified by either a physician in the community or a neighborhood in the community will bring it to the media's attention. I think what is critical at that point, is to determine what the community's concerns are and how best to address them; whether or not there is a biologic plausibility. Is the disease that is mentioned really associated with any exposures in the area? What is typically done is, the community, if you will -- which can be defined as either the immediate community around the facility or the facility workers or whomever that we define the community as-- They should be queried as to what the symptoms are. Those symptoms should be validated.

Unfortunately, oftentimes no specific disease emerges when you have a cluster identified. Oftentimes a group will say, "Well, I'm feeling nauseous. I have a headache." Many of us experience these on a regular basis, but what do they really mean? Why are they indicative of a more significant health outcome, if you will, and what possible exposures could be

attributed to those symptoms? Those are investigated, and I think what is critical is to educate that community at all times. Once the cluster is investigated, let the community know what you are doing about it. Have an active PR plan, in which you go back to the community at a certain point in time. Just because you have investigated and you have determined whether or not that exposure, or exposures are associated with those symptoms, what does it really mean, and what can you do for the community?

By knowing that a certain agent, if you will, causes a headache, what can I then do for you? How do I alleviate that headache? That's critical. It is not merely answering the community's concerns, but it is also addressing those concerns in a follow-up, if you will.

SENATOR CONTILLO: But, as he indicated, it is in your self-interest to keep the employees healthy, for a variety of reasons.

DR. LUCAS: Of course.

SENATOR CONTILLO: Now, are you required to list-- Is there a cancer registry that you must -- or even other diseases that you have to list that must be made public knowledge when you have a cluster of any kind? Is that something you do as good public policy? Why would you do it, or why would you not do it?

DR. THOMAS: I can tell you one of the major issues: It is very important not to make products or develop processes where the exposure causes a serious disease like cancer. One of the major reasons is, if you put a lot of money into the development of a product and you find out that it does cause cancer, you can sustain a very serious financial impact to the company.

The second major reason is, one of the basic assets of a company is the confidence of its employees that they are doing something worthwhile. That has to be maintained and

their health has to be maintained. For a large company like ours, we are self-insured, and any ill health in our employee population we pay for. One way or the other, we pay for it, not only through Workers' Compensation or Disability Insurance, but it is the medical bill itself. There is some co-pay provision. The employee also pays, but we pay the lion's share of it. And it is our policy to try to eliminate, as best we can for our employees, whatever will cause premature illness and disease. At some point, you know, this approach in preventive medicine runs up against a wall, because at certain points in aging, we run into mechanisms of illness and degeneration that we simply cannot deal with. One of those is cancer. Cancer is primarily a disease of the aged. If you live long enough, you run a higher and higher risk of eventually getting cancer. There are certain types of cancers that are virtually universal in the population, if you live long enough.

SENATOR CONTILLO: Okay. I am just wondering what your requirements are about reporting.

DR. THOMAS: Our requirements to report clusters are primarily through the Environmental Protection Agency at the present time. The cancer disease registries are basically requirements for hospitals to comply with. If there were requirements for occupational disease registries, this would certainly strengthen the ability of the Department of Health to deal with this issue -- if you could set forth specific requirements -- and we certainly would participate in that. That also would assist us, through the registry, in knowing whether there were emerging risks, because the earlier you know about the emerging risks, the better off you are in the conduct of your business.

DR. MARKOWITZ: I think clusters are scientifically interesting because they give you leads between agents as new causes for disease, but I worry less about them than really the

common occupational diseases which will be ascribed to other factors, when the other factors are readily apparent. There are those workers who develop lung cancer who also smoke cigarettes. Since physicians do not routinely ask occupational histories, even job title much less than go back into their history of exposures, that physician won't identify that person as having an occupational contribution to cancer.

Unfortunately, most workers do not work for large companies which have exceptional health surveillance programs such as described at American Cyanamid and Hoechst Celanese and, therefore, are not subject to that kind of surveillance and monitoring of cancer incidence. Cancers are routinely reported -- are necessarily reported through the State cancer registry, but the State cancer registry does not routinely look at your occupational contribution, or even the occupational profile of those cancers in order to detect the leads in terms of finding new carcinogens.

Of the 50,000 chemicals that exist, that are in use, there are only several thousand -- say 5000 to 10,000 -- chemicals which are in relatively common use. Most of these, unfortunately, have not yet been tested for their carcinogenicity even in animals, the reason being that the concern about cancer really is only recent, and these tests are laborious and expensive. The National Institute for Environmental Health Science, which takes a lead in the National Toxicology Program, pointed out that they had conducted, or had contracted for approximately 350 chemicals for carcinogenicity testing in animals over a 10-year period. So, the major government program in charge of carcinogenicity testing looked at 350 chemicals out of the minimum 5000 that are in common use. It is really a small fraction of chemicals that have been thoroughly tested for carcinogenicity.

Of those 350 or so, about half have been shown to be animal carcinogens. This does not mean they will be, or are,

human carcinogens. Unfortunately, the human data for half of the test carcinogens isn't really available, except for maybe 20 or 30 different occupational agents, so for the most part, even for the known animal carcinogens, we don't have a good data base. So the problem, in fact, may be larger than we believe, and it will be through research over the next 20 or 30 years that we will be able to show whether it is or not.

I think this is an argument in favor of not using excessively low estimates in terms of percentage of cancer. Although it is not an argument that gives you a precise figure, it allows you to use how much of an increment in cancer is due to these occupational carcinogens.

ASSEMBLYMAN SMITH: I note the presence of Assemblyman Tom Duch from the Garfield/Passaic County area.

ASSEMBLYMAN DUCH: Yes, that is correct.

ASSEMBLYMAN SMITH: Why don't we start at the end of the table with Assemblyman Albohn? This would be questions to any of the first 14 speakers.

ASSEMBLYMAN ALBOHN: Just one or two questions, really, of Dr. Markowitz, I guess: You mentioned before that of all the cancer fatalities, 90% seem to be nonoccupational in cause, and of the other 10% there could be an occupational contribution. Am I correct?

DR. MARKOWITZ: No. Actually, I'm saying that in an estimated 10%, there is an occupational contribution.

ASSEMBLYMAN ALBOHN: But again, to me a contribution means a partial cause. Is that correct?

DR. MARKOWITZ: Well, that's a good point. It may be a partial cause. It is virtually impossible with most occupational cancers -- to segregate out what percentage of other factors versus occupational factors, when an occupational factor is present. There is a specific study for asbestos which shows the presence of asbestos in heavy doses to workers, and multiplies the increase in underlying lung cancer risk for

smoking workers fivefold, but for the most part we really don't have a good handle on sorting out the relative contribution.

ASSEMBLYMAN ALBOHN: I think it is important to recognize then that it is not 10% of the cancers that are occupationally caused, but of that 10% some could be, and some might not be at all, because of other conflicting factors, the heavy cigarette smoker who happens also to have worked in the asbestos industry. Which are you going to blame it on? Right?

DR. LUCAS: I think what is important to realize is that disease is caused by a myriad of factors. You never have, or you rarely have-- Excuse me. You will rarely see one chemical agent causing one specific disease. Genetic, cigarette smoking, other life-style factors, access to medical care, how regularly you see a physician, what your dietary habits are, what other occupational exposures you have had in the past, whether you live an active life-style versus a sedentary life-style-- All of these play a role in one's health. It is the combination of all of these factors, and others that I have not named, that place an individual at risk for a specific disease.

So, when you look at occupational diseases per se, you have to realize that prior to 1970, we did not have stringent exposure and detailed industrial hygiene measurements that we have now, so it is vary hard to attribute one exposure to a specific disease. It is really that combination of factors that place the individual at risk. You need to look at the global picture, if you will, in order to understand the disease process.

ASSEMBLYMAN ALBOHN: I think that just carries forward my point, perhaps, that the testimony of the first group of people seemed to be aimed at the fact that almost any kind of exposure to any kind of a hazardous chemical was going to cause you to come down with some kind of a disease. I think what you have just said indicates to me that that is not true; that you

perhaps are at risk in that fashion, but it does not mean that you are going to come down with some horrible disease.

The reason I mention this is because that seems to be the basis of most of the concerns of people surrounding manufacturing plants. They begin to think that because they have once sniffed some benzene, they will come down with leukemia or something of that sort, despite the fact that they may have had many worse exposures to many other things.

I think the importance is to communicate to the public that exposure to a chemical is not quite like an exposure to an infectious disease, because I think some people have that feeling; that if you are exposed to a virus of some sort, you are pretty sure to get the disease that that virus generates, or carries. If you are exposed to a chemical, it may mean nothing at all. I mention this with some personal interest, really, because I guess I have worked in the chemical industry for -- including my pre-high school laboratory experiments -- close to 50 years. The list of toxic materials is sort of like a list of materials that I have worked with, and yet somehow or other, I am -- knock wood, if I could find some wood around here to knock on (knocks on table) (laughter)-- This is toxic. Well, yeah, this is a formaldehyde plastic. Heavens to Betsy, we may be sniffing some formaldehyde, and we are all going to come down with formaldehyde-created cancer.

I think this is part of the problem. There are groups that are trying to fester fear. I am not sure whether their interest is really in protecting people, or if it is more in getting access to industrial institutions so that they can keep an eye on what they are doing, and perhaps maybe consider themselves to be the self-appointed guardians of the people. I am glad to hear some of this other testimony, because it indicates how closely our industrial operations are monitoring their personnel and their exposures to make sure that, number one, there is no needless exposure, and number two, the

intervention of a nontechnical or inexperienced interest group -- if you can call it that -- is not really necessary, especially as mandated under the HELP bill. That is more of a statement than a question, I guess, so excuse me.

ASSEMBLYMAN SMITH: It certainly is, but that's okay. Assemblyman Tom Duch, do you have any questions, sir?

ASSEMBLYMAN DUCH: Well, I want to thank you very much for recognizing me, Mr. Chairman. I would like to thank the doctors for being here, and for giving us this brief exchange of views. I have no other questions at this time.

ASSEMBLYMAN SMITH: Thank you, Assemblyman. Assemblyman Cohen?

ASSEMBLYMAN COHEN: You have read the legislation. Are you saying that medically the legislation is contraindicated? (laughter)

DR. THOMAS: I read the report. I contacted Dr. Markowitz and invited him to attend our meeting because I think it is an important report, and it certainly cuts to the heart of occupational medicine. Somebody told me about the HELP legislation. I read the HELP legislation, and I said, "So?" He said, "Well, it is the Occupational Disease Report." I said, "What is the relationship between the two?" The recommendations in the Occupational Disease Report from Mount Sinai are recommendations that have been made before at the national level, which we have supported. We want to improve the practice of occupational medicine; we want to improve the practice of exposure tracking for our workers. That is something that we are supporting. But I don't see how the HELP legislation contributes to that.

ASSEMBLYMAN COHEN: Let's assume the HELP legislation is just simply one more legislative filter in terms of protecting the workplace. There may be many chemical companies, not just chemical companies, but other companies which deal with chemicals, where workers are exposed and

communities may be exposed. The type of safeguards that American Cyanamid may have, a company of much less means may not have. Those workers in those companies, where they are sited, may be more of a danger to the community.

So, I mean, American Cyanamid may be doing everything they believe necessary, and they have the resources to have in-house physicians and the ability to hire consultants and other technical staff to provide the best guidelines for its workers in terms of monitoring physical problems. But there are many companies that don't. I intend to find out the true nature of the chemical companies in the State and how many fall in the range of American Cyanamid, and how many more are on a much lower level.

You indicated that doctors believe in preventative medicine. Even though there may not be a major problem, doctors will prescribe -- will suggest diets, in order to prevent certain things from developing. They do so, I would assume, based on certain assumptions; that is, if you eat particular items you have a better chance of certain physical ailments later in life, whether it is a year from now, five years from now, 20 years from now. I think we can begin taking that-- Would you agree that physicians do that?

DR. THOMAS: They certainly should do it.

ASSEMBLYMAN COHEN: This is just basically legislative preventative medicine. You also, I would imagine, in the companies-- You do monitoring by physicians and nurses on-site. Is that correct?

DR. THOMAS: That is correct in our company -- in those companies that have the resources and are in the tradition of doing that.

ASSEMBLYMAN COHEN: You also suggest that they also see their private physician.

DR. THOMAS: We, by and large, use private physicians for the clinical evaluation of our people. That is done in the local community.

ASSEMBLYMAN COHEN: Do workers also see their own physicians beyond the doctors you use, or the nurses you use on-site? Do they also have their own private physicians -- the workers?

DR. THOMAS: They certainly can. It is now clear that many, particularly the younger workers, do not see physicians on any regular basis, and they do not have private physicians. But when they don't and they come to us, we will refer them to people we know in the community. But their private practice is done in the local community, yes.

ASSEMBLYMAN COHEN: Okay. So you also even have medical redundancy, in terms of checking workers at the site, and workers also going to see their own private physicians, or physicians who are utilized by the company in some vein also, correct?

DR. THOMAS: There is considerable redundancy in the system.

ASSEMBLYMAN COHEN: And you can have legislative redundancy, you can have medical redundancy, correct?

DR. THOMAS: Well, I am a physician. I am not sure what legislative redundancy is. I will leave that to the Committee to discuss.

ASSEMBLYMAN COHEN: Sometimes it is HELP.

ASSEMBLYMAN ALBOHN: It is what you call "overkill."

ASSEMBLYMAN COHEN: Well, I will let that pass.

DR. THOMAS: If it is a question--

ASSEMBLYMAN COHEN: There is also a question-- There has been a concentration in terms of discussing cancer, but there is also a myriad of respiratory diseases unrelated to cancer which can also be caused by the type of products that are used, and how products and toxics are stored. We don't have information in terms of that. There has been a concentration in terms of the questioning solely on the percentage of cancer, where the 13,000 factors that may go into

someone who unfortunately develops cancer-- I don't think it is--

Part question, part statement: I don't think legislative responsibility means you have to prove a particular point beyond a reasonable doubt. I think you can begin with certain assumptions that may not be entirely correct, but that-- I mean, little did we know that Perrier is an active ingredient. I think you begin with certain assumptions that there are certain products and chemicals that if someone has exposure to, either over a prolonged period of time or through accidental exposure, that may lead to cancer, or may lead to respiratory problems. Is that correct?

DR. LUCAS: I believe that the detection of disease can best be served through research and utilizing the resources of those professionals. I think it best to utilize our funding to promote education among the occupational physicians and among other professionals in the field; increase our knowledge of occupational disease and the extent of disease in the State; and utilize the services, if you will, of the State Health Department and our other sources.

If a facility is not large enough to sustain an epidemiologic function, if you will, it is still regulated by law, and it can still seek the services of other consultants, including the State Health Department.

ASSEMBLYMAN COHEN: But you can start out with certain assumptions, correct?

DR. LUCAS: I try not to assume anything.

ASSEMBLYMAN COHEN: Well, I have heard many assumptions today, medical assumptions, so I guess we choose within our own discipline as to what we characterize as an assumption.

Do you also find that-- I mean, if we are going to rely completely on statistics, there may be many employees who, because they don't realize that something that is going on

in their body, whether it is a headache, a stomach ailment, that based upon their own work ethic, that there may be a lot of unrecorded matters that 15 or 20 years later turn out to be a cancer-related or respiratory-related problem; people who may not want to report something to management because they fear they will lose their job, or they will be shifted to a different type of work at a reduced amount of pay, and that even that information you may be receiving may be incorrect in terms of actually how many problems exist in the workplace.

DR. THOMAS: In response to your concerns about the employee who may not want to report, what he needs is access to physicians who can give him good advice. Also what he needs, are some assurances, particularly that the exposures he has had were not outside the permissible exposure limits. One of the items that was cited in the report by Mr. Markowitz, was the OSHA statistics that facilities are operating outside the PEL. Well, that is a regulatory issue. It is already a defined issue. You need the resources to assure that they do operate within the PELs.

We also heard testimony today that the resources to the Department of Health are being diminished. So you get into a situation where, what is the best way to spend the public moneys with regard to improving worker health? And what I don't understand is how the HELP legislation is the best way to do that, because it doesn't directly relate to some of the primary recommendations in the Mount Sinai Report of improving occupational medicine practice and improving industrial hygiene skills so that we get good monitoring results and we know what the exposures are.

These are two things we want. These are two things that my company wants and I believe my industry wants, at least those that have come forth and made any statements. So what I ask of the public bodies, is how best to do that. Whatever you do, you are going to use up resources, and I think it is the

deliberative bodies that have to decide best how to deploy those resources. And you are going to cause cost to industry. What we want to do is make sure that those costs are well spent, and then when we come back here five or ten years later, we can say: "Hey, we are showing progress in reducing occupational disease."

ASSEMBLYMAN COHEN: You have that through a whole stream of Federal and State legislation. We have heard testimony from representatives of the industry that they have reduced pounds into the air, into water, into the ground. That has been done not by any voluntary effort. That has been done through a host of legislative enactments mandated by the Federal government and the state legislatures, which ultimately compelled industry to comply with certain guidelines, which then resulted in reductions in the air, reductions in the water, and hopefully some type of inference that in turn that will reduce exposure to its citizens.

So, if this goes into effect we may have testimony when another bill comes up 10 years from now to improve on health-- There will be testimony again saying, "Well, we have reduced it 48%. We have reduced it 36%." I'm sure we will have the same dialogue at that point.

Thank you very much, Doctor.

ASSEMBLYMAN SMITH: Doctor, just to answer your specific question, what is the relationship of the HELP legislation to the Mount Sinai Report, one of the specific recommendations in the Mount Sinai Report, and I quote from page 92, is: "We recommend that the State of New Jersey adopt measures to increase worker participation in assuring safe and healthy workplaces in New Jersey." That is really the direct relationship between the study and HELP. HELP is one of the approaches, in our opinion, that has been recommended by the Mount Sinai Report.

Dr. Markowitz--

DR. MARKOWITZ: Well, the Mount Sinai--

ASSEMBLYMAN SMITH: --for a concluding word.

DR. MARKOWITZ: Okay. Mount Sinai is just one center of activity. We made our recommendations in good faith, but we certainly are not the last word on what ought to happen. Let me just say how we came to the conclusion that there ought to be new paradigms used for improving health and safety in the workplace:

I think if you look at the OSHA data it is quite alarming, because 10 years after OSHA exists -- meaning beginning in 1980 through '86, which is the most recent years for which we have the data -- for industries where you expect to find lead and silica and where OSHA has been and found lead and silica, they find that in from one-third to one-half of those industries there is documented overexposure; that is above the permissible exposure level.

Now, these companies may not be American Cyanamid, Hoechst Celanese, or some of the other larger corporations. Frankly, I don't know the individual companies' names. But the point is, even if OSHA, in the early '80s, which had restricted funding-- Even if you doubled, let's say, the number of inspectors, which would be difficult to do because qualified industrial hygienists are not available-- But even if you doubled the number of inspectors, it would still require 30 to 50 years in order for OSHA to inspect, just once, every single one of those workplaces, industries which OSHA itself has found to be at high risk.

So I think OSHA is useful. I think it has helped certain companies. I think, undoubtedly, there are companies which comply with OSHA. On the other hand, as a paradigm of what will work in the workplace, it has limitations. Therefore, other measures need to be tried, in order to see if workplace exposures can be reduced in the totality of industries, not really just in the exemplary industrial workplaces.

ASSEMBLYMAN SMITH: Doctors and our 14 first witnesses, thank you for your testimony. It has been most helpful.

Our next witness will be Eileen Nic, Citizens Commission on Bhopal. Eileen, are you here?

E I L E E N N I C: Yes.

ASSEMBLYMAN SMITH: Is Shelley Hill present? (affirmative response from audience) All right, I am going to ask Shelley and Eileen both to come to the table. Shelley, I understand you have to leave, so perhaps I can ask you to testify first. Shelley, what is your last name again?

S H E L L E Y H I L L: It's Hill, H-I-L-L.

ASSEMBLYMAN SMITH: Shelley, would you please begin?

MS. HILL: Okay. I want to thank Senator Van Wagner and Assemblyman Bob Smith for holding this public hearing. I live at 100 E. Eighth Street in Thorofare. This hearing is very important to me. As a full-time mom -- this is my daughter, Katie -- and a spokesperson for our township's environmental group, CAP -- Citizens Against Pollution -- I have come to give testimony on behalf of our organization, along with one of our other members.

I live 2400 feet from the Coastal Eagle Point Refinery, which is a petroleum manufacturer in Westville, New Jersey. The plant itself is 45 years old. This fact causes some initial concern over the plant's standards and safeties for the 1990s. As you know, this refinery is one of the top 10 emitters of hazardous substances in New Jersey. Our group was formed because we felt something should be done about the air and water qualities in our area. We are also concerned about the safety of our children, and also the safety of the plant workers. Our group sees this plant as a health hazard.

The refinery produced over two million pounds of toxic chemicals in 1988. One hundred and forty-eight thousand pounds were released into the air, and another 91,000 pounds were

discharged into the Delaware River. The air emissions included 31,000 pounds of known or potential carcinogens, mostly benzene. "The New Jersey Department of Health Hazardous Substance Fact Sheet on Benzene," points out that many scientists believe there is no safe level of exposure to a cancer-causing agent.

Another of the group's worries is that the plant is 800 feet from an elementary school, and I have shown you the pictures. During warm months, unair-conditioned classrooms must remain closed, as odors from the plant are so strong. Teachers have had to move whole classrooms to other areas. There is also an article from The Gloucester County Times, which I have given you, about a child who is in the third grade. Air fresheners have often been used to eliminate the smells temporarily. Many parents are also concerned about evacuation procedures in cases of a fire or an explosion at the plant. There were two fires reported in 1989 at Eagle Point, one specifically happened in July. Our township Fire Department had to be called in to extinguish the flames, as the fire could not be controlled with just the equipment they had at the plant.

CAP -- Citizens Against Pollution -- feels that close community and worker monitoring of Eagle Point as it affects the environment is essential. A good neighbor agreement between the company and the residents based on a community inspection is the first step. However, we met with Mr. Dapinski (phonetic spelling), the plant manager, and he told us that he would not allow a group to come into his plant. He said, "As soon as it" -- meaning HELP -- "becomes a law, we will allow it."

Coastal Eagle Point Refinery, we feel, is an important example of the need for the passage of the Hazard Elimination Through Local Participation Act. Our group wants to become involved in helping to make our community healthier and safer for our children.

Thanks for hearing me, and for allowing me to go first.

ASSEMBLYMAN SMITH: No problem. We understand the difficulty. Thank you for testifying.

Eileen Nic, Citizens Commission on Bhopal.

MS. NIC: Would it be possible for me to yield to allow Wynne Falkowski to go first, to keep the community inspection section flowing?

ASSEMBLYMAN SMITH: That is not a problem. Is Ms. Falkowski here? (affirmative response from audience)

W Y N N E F A L K O W S K I: What we will do here is just continue the panel on community inspections. What this panel would like to do is present you with our experiences with community inspections, both successful and not so successful. You have already heard from Shelley Hill, with her not so successful experience, and now I would like to give you one of our successes.

My name is Wynne Falkowski, and I am the Chairman of the Coalition Against Toxics, a South Jersey grass roots environmental group which is based in Evesham Township, Burlington County. I am also a member of our Local Emergency Planning Committee, former Chairman of our municipal Environmental Commission, and former member of our Planning Board.

I would like to share with you our successful experience with a community inspection with the hope that it will convince you that community inspections are not only needed but possible and are mutually beneficial to both residents and industry.

Our first community inspection took place in May 1988 at Dynasil of America, a high purity glass manufacturer in Berlin, New Jersey. An inspection was requested after neighbors expressed concerns about community safety. This was also after a fire at the plant. They were also concerned about the visible environmental effects of stack emissions within

about a 200- to 300-foot radius, where all the vegetation in a wooded site was completely dead. So this concerned the immediate residents in about 400 homes.

We requested a meeting with the owner of the plant, and after several meetings with him he agreed to an inspection, but that was against the advice of his legal counsel. The owner stated that he went with his instincts. He said, and I quote -- and this was also in The Philadelphia Inquirer -- "If the neighbors are concerned about the operation of my plant, that is of concern to me. I want to operate in an environmentally sound manner, and I am willing to take the time to sit down and talk about it."

The company's commitment to neighborhood safety was dramatically evidenced when they implemented all five of the recommendations made by the community inspection team. That team consisted of the local fire chief, two members of our group, the Coalition Against Toxics, concerned neighbors, a representative from the municipal Environmental Commission, and two technical consultants, one of whom was an industrial hygienist who had formerly worked for OSHA.

In addition, the company agreed to an ongoing dialogue with our group to deal with future concerns as they arise. The company's willingness to deal with accident preparedness demonstrated the importance of the prevention approach in the use of toxic materials.

Our intent when we went in to do this inspection was never to shut down the operation, but simply to understand the process, review the actual facts, assess the risk to the community, ensure the safety of the neighbors, and, in doing that, we would also ensure the safety of the owner and the workers in the plant. The results of our inspection were published locally and went a great way towards allaying the fears of the residents.

Ironically, about a year after the inspection, the community group actually rose to the defense of Dynasil when the company was attacked in the press by its local government for alleged pollution violations. The municipality's concerns arose out of a lack of knowledge of the plant. After a joint meeting with the Town Council, they realized that Dynasil was not only operating within the parameters of their DEP permits, but was in the process of upgrading their pollution control equipment to further decrease their discharges below their permit level, and had also done an Emergency Management Plan, even though they were not required to do so.

We believe that this experience serves as a model for future good neighbor agreements between local industry and the community. However, not all companies are as sensitive to the concerns of neighbors as Dynasil. It is for this reason that we urge you to pass the HELP legislation. This will allow all citizens the right to assure that they are being protected from toxic hazards. The community inspection was more effective at getting results than any other existing political entity because of jurisdictional, regulatory, and enforcement loopholes or constraints.

For example, with jurisdiction, even though we had an active LEPC and Environmental Commission, the plant was in an adjacent town which did not have an Environmental Commission, so we didn't have jurisdiction to go into the plant. Also, when we were talking about an emergency plan, we were told, "It will come to the county." Well, it is also a different county.

As far as regulations go, even though the plant did present a danger to the immediate vicinity-- In case of a spill, there would be a hydrochloric acid plume that would immediately affect 400 homes in our town, and keep going. It wouldn't necessarily affect the town it was in. The size of the storage tank was too small to report under SARA Title III, and the size of the plant was too small to be required to file an Emergency Management Plan.

As far as enforcement, earlier on, before our inspection, the plant didn't meet existing standards and their permit for emissions, but when we did make the inspection they had some safety violations which were corrected. Because of other evidence you heard earlier about OSHA inspectors -- there not being enough to go around -- we were able to pick these up.

I thank you for this opportunity to testify on behalf of this legislation and hope that you will look favorably on our experience, and by passage of this bill, make our successful experience a reality for all concerned citizens in the State of New Jersey.

I would like to now introduce Rosalind McBride, who also had an experience with community inspection. Rosalind is from the Middlesex County Environmental Coalition.

ASSEMBLYMAN SMITH: Would you please pass the microphone down to her?

MS. FALKOWSKI: I sure will.

ASSEMBLYMAN SMITH: Yes, that's the one. Thank you.

R O S A L I N D M c B R I D E: Thank you. My name is Rosalind McBride. I am a resident of the Parlin section of Sayreville, and I am from the Middlesex County Environmental Coalition. This testimony is on an inspection that I was on at CPS Chemical in Old Bridge.

The residents and members of the Middlesex County Environmental Coalition are concerned about the operations at CPS Chemical Company, a Superfund site located in Old Bridge. Some of our concerns are groundwater contamination, operational safety procedures, and odors emanating from the facility.

On a number of occasions, residents have complained to the New Jersey Department of Environmental Protection and the County Health Department. Although some complaints have resulted in violations and fines, this action could not alleviate the fear of possible health effects from the chemical emissions.

One nearby resident wrote a letter to the company to express her anger and fear due to the odors, and she requested a meeting with the officials. Mr. Jack Rowe, Vice President of CPS, responded with an invitation to visit and tour the facility.

Realizing that we are not experts, we contacted Jacqueline Nowell, an industrial hygienist, who is with us today, to accompany the residents on the tour. The purpose of Ms. Nowell's presence was made known at the onset of the meeting. We explained that the qualifications and objectivity of the industrial hygienist would be beneficial to the residents, as well as the company. He agreed, and the tour proceeded as planned.

Ms. Nowell prepared a report based on her assessment of the walk-through and included recommendations for improvements. After discussing her report with the residents, a copy was sent to Mr. Rowe and a second meeting was scheduled to address the recommendations.

One of the needed improvements mentioned in the report is a fourth-stage air cleaner to be added to the scrubber system, to eliminate vapors that are apparently escaping the present system. We have now been told by Mr. Rowe that in addition to the systems now being designed, this will be on-line by summer. Hopefully, this will be an improvement for the residents in the area.

Other recommendations, such as groundwater monitoring results, the emergency response plan, and the need for a more thorough inspection, were discussed, and plans were made to address these issues at a later date.

We have found Mr. Rowe to be very cooperative in dealing with the concerns of the residents. He has expressed a willingness to continue our meetings in an effort to instill confidence that CPS is a responsible neighbor.

The growing awareness of health and environmental impacts of companies like CPS has prompted residents in all communities to become concerned. An open dialogue between the residents and the industries that affect them is essential if we are to coexist. For this reason I am here today to urge the support of HELP.

Thank you.

MS. FALKOWSKI: Next I would like to call up Mr. Greg Schirm, from the Delaware Valley Toxics Coalition.

G R E G O R Y S C H I R M: Thanks very much. My name is Greg Schirm. I am Director of the Delaware Valley Toxics Coalition, a local environmental organization in Philadelphia. We have done some work with community groups in South Jersey in the last few years. I am also a member of the Philadelphia Local Emergency Planning Committee and the Community Advisory Committee at the Rohm & Haas Company's Bridesburg plant in Philadelphia.

The Toxics Coalition led the campaign for the nation's first Right to Know law, which was enacted in Philadelphia in 1981. Since that time, we have worked primarily with local community groups in the Philadelphia area on toxic pollution problems.

It has been our experience in Philadelphia that environmental enforcement agencies have not been very effective in solving community pollution problems without the active involvement of community residents. In many cases, it has been necessary for the community to organize and initiate action on its own to resolve longstanding pollution problems in the community.

Although the information about toxic chemicals available under Right to Know laws has been invaluable in many of these efforts, it has never been sufficient. In most cases, getting information about the toxic chemicals at a polluting facility is simply the first step in trying to identify the problem.

I would like to briefly describe three situations in which community residents went beyond the Right to Know to either solve existing pollution problems or prevent potential problems. These situations involve three different facilities in Philadelphia: a smelting plant, a municipal waste incinerator, and a hospital incinerator. All of these facilities are located in residential neighborhoods.

The Franklin Smelting & Refining plant in Bridesburg had been causing severe pollution problems for decades. Area residents had complained about heavy smoke, foul odors, and various acute health effects, respiratory problems, and so forth. The City's air pollution enforcement agency had done very little to alleviate these problems over the years. With help from the Public Interest Law Center, a nonprofit legal assistance organization in Philadelphia, the community finally, after years of complaints and organizing, brought a citizen lawsuit against the facility under the Clean Air Act.

The lawsuit resulted eventually in a consent agreement between the company and the community. Under the agreement, the company was required to improve its pollution controls. They put in new fabric filters to control particulates, enclosed equipment to prevent fugitive emissions, added scrubbers to remove sulfur dioxide from the air emissions, and put afterburners on their blast furnace to eliminate toxic gases.

But, equally important, the community was given the right under this consent agreement to inspect the facility periodically to determine whether the improvements had actually been made, and whether they worked. Under the consent agreement, the community could inspect the facility and its records three times each quarter, twice on 24-hour notice, and once on one-hour notice.

Because pollution problems continued for a number of years even after improvements had begun to be made, the

community has had to exercise this right fairly often. With technical expertise provided by the Law Center, they have insisted on further improvements, or changes in the operation, to try to prevent some of the pollution problems. After five years, the situation has generally improved. Nevertheless, the consent agreement has been extended to provide the community with continued access to the plant, and to require further improvements.

The City's own municipal incinerator in the Roxborough section of the City was also a source of pollution problems for several decades. It was built in the 1960s, and by the 1980s people had suffered from pollution problems for years. Again, despite frequent complaints about smoke, odors, and fly ash from community residents, the City failed to improve the operation. With help from the Public Interest Law Center, the community finally again, after years of complaints and suffering from the problems, brought a citizen lawsuit and won a consent agreement with the City. Under this agreement, the City revamped the pollution control system on the incinerator, added continuous emission monitoring for opacity, and conducted stack tests for dioxin and heavy metals.

Once again, the community won the right to inspect the facility, including six unannounced inspections each year, and any number of visits with 72-hours notice. In addition, the City paid for several community residents to become certified as smoke readers so they could determine violations of the opacity regulations.

Primarily as a result of the community inspections, as well as the constant threat of an inspection and the residents' ability to determine violations, the City improved the operation of the incinerator markedly. Over time, the average incinerator temperature was increased from 1000 degrees fahrenheit to 1700 degrees. Smoke, odors, and fly ash became much less frequent occurrences.

Because the community received copies of the temperature charts of the incinerator monthly, and could review the records of the opacity monitor, they could easily determine if continued pollution problems were being caused by improper operation of the facility.

Lastly, after a number of local hospitals had been forced to abandon plans in Philadelphia to build resource recovery incinerators because of community opposition, Presbyterian Hospital -- a small hospital in West Philadelphia -- approached local civic groups in the area with a proposal. The hospital offered to negotiate an agreement with the community over the construction and operation of an infectious waste incinerator, in exchange for community support for the project.

Representatives of four area groups met with hospital officials over the course of several years and worked out an agreement on the incinerator. Under the agreement, a community compliance committee was formed. The committee meets monthly with the hospital and has access to all of the incinerator's monitoring records, as well as the right to inspect the facility without notice. The hospital has paid for several community residents to become certified smoke readers.

In addition, the hospital agreed to operate the incinerator according to a set of standards included in the agreement covering temperature, opacity, and other factors, standards which were, in fact, higher than would be required through existing environmental regulations. If problems occur that cannot be immediately corrected, the hospital is required to shut down the operation until it is fixed. In fact, the equipment includes automatic lockout devices that prevent the loading of waste under various conditions. If the hospital violates the agreement, it is penalized by paying fines into a community improvement fund controlled by the local groups.

So far, there have been few problems with the operation of the incinerator and the community is satisfied that it has sufficient guarantees to protect itself. I might add that I think the hospital management is also satisfied with how the agreement has worked out in practice. Other hospitals and community groups in the area have used this agreement as a model for their own negotiations.

The lesson from these experiences is that with the ability to act on its own behalf, a community is in a better position to protect itself from pollution hazards than if it simply relied on government enforcement. While some groups have won these rights through the courts, most have not, unfortunately. I have not described the far more numerous cases where community residents continue to struggle with local pollution problems, or simply become discouraged by their inability to resolve them.

What citizens clearly need in these situations are guaranteed rights of access to polluting facilities and the opportunity to negotiate agreements -- legally binding agreements -- with the managers. In other words, what citizens need is HELP. Without it, they will be forced to use the courts, or the streets, to deal with these problems. With it, we can begin to solve pollution problems in a manner that benefits everyone.

ASSEMBLYMAN COHEN: May we have a copy of your statement?

MR. SCHIRM: Yes.

MS. FALKOWSKI: Next we will have Jackie Nowell, an industrial hygienist.

J A C Q U E L I N E N O W E L L: Hello. I am an industrial hygienist. I teach at Hunter College, and I also work with a coalition of labor unions in New York City called NIOSH. I am not submitting formal testimony today. My colleague's --

Richard Youngstrom -- testimony will be submitted to you. Unfortunately, he is not able to be here today due to an illness.

He and other of my colleagues have performed, perhaps, a dozen of these community inspections across the country. What I would like to do is reiterate what Rosalind McBride said about the experience we had at CPS Chemical.

CPS was, and continues to be, cooperating with the MCEC and the neighbors around that facility. I am a person with technical experience and expertise for performing a plant walk-through, and as such I feel, number one, I assisted a concerned community in understanding the nature of an industry that is in its backyard, and number two, in determining in the walk-through -- determining areas of potential concern that need to be investigated further.

The results of the inspection have been positive in many ways, not the least of which is that a good neighbor relationship has been created with this company.

ASSEMBLYMAN SMITH: Have there been any negative results?

MS. NOWELL: Have there been any negative results?

ASSEMBLYMAN SMITH: Yes.

MS. NOWELL: Not that we know of so far. They have been very cooperative in meeting further with the community group, and actually implementing some of the things we suggested. One of the major things that was suggested in the report, was that a more intensive walk-through be performed by someone who has worked in chemical facilities as an industrial hygienist, and they have agreed to that.

MS. FALKOWSKI: Just as a postscript to Shelley's testimony earlier referring to the Coastal facility and the school nearby, there is a copy of a letter to an editor. It is very short, and I would just like to read it into the record:

"To the Editor: I go to the Red Bank School in West Deptford. I am in the third grade and I am nine years old. I

don't think Coastal should do any more to their property because it smells even worse around here.

"One day in school it smelled so bad that everyone was coughing, even our teacher. Our teacher had to call the janitor to bring some air freshener into the three classrooms. It smelled like rotten eggs. Our teacher thought that someone had brought in a stink bomb. That is how bad it smelled. Sometimes it even stinks when we go to school in the morning.

"I think Coastal should stop building and polluting our air."

Eileen?

MS. NIC: My name is Eileen Nic, and I am Program Director for the Consumer Policy Institute Citizen Action Project. The Consumer Policy Institute is a department of Consumers Union, publisher of "Consumer Reports." I would like to thank you for holding this hearing.

I am here today to testify on behalf of the Hazard Elimination Through Local Participation bill, or HELP, particularly to comment on the Local Emergency Planning section of the bill.

Several individuals have already testified as to the number and severity of accidents that have occurred here in New Jersey and throughout the country, and it is frightening. Let me just add to this, that according to State Police records, there were over 4000 accidents, both large and small, in New Jersey in the first half of 1989 alone.

The Federal 1986 Emergency Planning and Community Right to Know Act -- which we have been talking so much about here today -- was put into effect after the tragic accident in Bhopal, India. It required each state to set up local Emergency Planning Districts known as LEPCs to plan for such a catastrophic chemical accident. In New Jersey, Executive Order No. 161 set up 567 municipal and 21 county committees, an excellent opportunity to bring planning to the local level.

By Federal law, these LEPCs are required to prepare an emergency plan and update it each year. The plan must include information on what chemical accidents are possible in a community, which populations are likely to be affected, and how they can be evacuated in an emergency. It must also include descriptions of how the emergency responders -- fire fighters, police, hazmat teams, and others -- will handle the emergency, what equipment is available, and so forth.

We have been surveying New Jersey LEPCs periodically over the last year-and-a-half, and the results of those surveys form the basis for this testimony. Although they are very committed and very dedicated, and a mostly volunteer group of public servants, and despite the fact that State agencies such as the State Police Office of Emergency Management have worked extremely hard to provide training and support, and even though industry has provided technical assistance in many cases and the chemical manufacturer Care Program has encouraged industry participation, New Jersey LEPCs have had a very difficult time doing their job.

As of October 17, 1988, the Federal deadline for completing the first emergency plan, only about 100 of the 588 committees had complied with the law. A year later, in October 1989, the number had risen to only 126. As I mentioned, we have completed several surveys over the past years to try to find out what difficulties LEPCs are having. Time and time again the answer has been the same -- lack of funds to do the job.

The HELP bill is important to the success of the LEPC process in New Jersey. It not only answers the funding problems, but seeks to clarify other issues that have been left unclear by the Federal law. It is by no means a radical departure from the system as it currently exists, merely a further enunciation of the process.

For instance, HELP would further democratize LEPCs and tailor them to the New Jersey situation. While SARA -- the Federal law -- requires that LEPC members be drawn from 14 different occupational categories, HELP requires them to come from 16. HELP's categories are parallel to SARA's, except that HELP would add several particular to New Jersey, like Environmental Commissioner and Right to Know Coordinator. HELP would also require that seven LEPC members be drawn from the public, increasing the opportunity for public participation. The remaining nine would be from government.

In addition, HELP would assist LEPCs in getting all the data they need to prepare an effective plan. LEPCs already have the right under SARA to gather any documents they need to complete their plan, such as a hazard analysis, facility emergency plan, Right to Know data, and so forth, though these are not all specified in the Federal law. HELP goes a step further. It specifies that a facility must give an LEPC, upon request, two critical documents -- the facility emergency plan and the hazard analysis. It would also require that facilities update those documents every year or when requested by the LEPC.

HELP would also give LEPCs a clear right to inspect SARA facilities. That right is only implicit in SARA, although many LEPCs are already exercising it. A survey of LEPCs undertaken last winter by Assemblyman Bob Smith and Senator Gabe Ambrosio, in conjunction with our group and the Right to Know and Act Coalition, indicates that close to 60% of LEPCs responding had inspected facilities as part of their planning work. This was 156 LEPCs which responded to the survey.

Most importantly, though, HELP would respond to the LEPCs' major concern. It would authorize municipalities to adopt ordinances imposing fees on owners or operators of facilities to enable LEPCs to do their jobs -- inspect facilities, collect and organize data, write the plan, hire expert assistance, and so forth. A vast majority of LEPCs

surveyed in the Smith/Ambrosio effort -- 83% -- indicated that they would favor such a system.

Because strong and representative LEPCs are key to secure communities, the Consumer Policy Institute strongly supports HELP.

Thank you.

ASSEMBLYMAN SMITH: Thank you all. Thank you for your comments and testimony.

Mr. Bozarth has two additional representatives -- Pat Gilby, from DuPont, and Doug Bondor, American Cyanamid. Ms. Gilby, would you like to take the lead?

P A T G. G I L B Y: My name is Pat Gilby. I am an occupational health consultant with the DuPont Corporation in Wilmington, Delaware. I have a bachelor's degree in chemistry and am also certified in industrial hygiene comprehensive practices.

No public issue is of greater importance to DuPont today than corporate safety, health, and environmental responsibility. The issue is not limited to the State of New Jersey; it is worldwide because industrialization and trade are increasing worldwide. Business firms, including DuPont, have found it necessary to compete in global marketplaces, where a premium is placed on improved products and services fashioned through advancing technologies. The imperative to compete against all comers complicates the response to safety, health, and environmental demands, but it does not lessen their urgency.

As a practical matter, corporations must take the lead responsibility in dealing with the safety, health, and environmental impact of industrial operations, working with the public sector. Meeting our corporate safety, health, and environmental responsibilities pays off not only in a cleaner, healthier environment, but in improved profits, good will among neighbors and customers, and greater productivity and morale among our employees.

We do not perceive that the legislative approach as described in the Hazard Elimination Through Local Participation bill will be additive to DuPont's functioning capabilities to meet our safety, health, and environmental responsibilities and commitments.

Having said this, how best can we discharge our responsibilities? There are a number of guiding principles applicable to this issue which DuPont uses. They are:

1) Defining the responsibility broadly to incorporate safety, health, and environmental affairs in one comprehensive effort. Excellence in any of these areas can be made to carry over into the others.

2) Establishing unequivocal and unambiguous policies. Supervision at all levels must understand that safety, health, and the environment can never be compromised in the pursuit of efficiency, product improvements, and corporate earnings, fundamental as the objectives are.

3) Locating responsibility for safety, health, and environmental concerns in the line organization, beginning at the top with corporate officers. The line organization, in turn, must get all employees involved.

4) Extending worker safety to employee activities off the job and to their families and the community at large.

5) Considering the environmental impact in product development and process design.

6) Handling hazardous materials safely and properly. This includes waste.

7) Informing people about the company's operations, including hazards.

8) Taking a leadership role in initiating and promoting industry and community efforts to improve safety and preparedness.

9) Applying these principles in all operations, irrespective of where in the world the operation may be.

DuPont has had in place for many years a coprorate policy which requires that each of our products be made, used, handled, and disposed of safely. The policy is a written public document that applies to our operations in New Jersey and worldwide. The basic policy statement is backed by detailed policy statements on waste management, workplace hazard control, notification about chemical hazards, occupational illnesses and injuries, community protection, and control of releases, spills, and leaks. At each level of the corporation, down through the management and employees of our New Jersey sites, the specific levels of responsibility for safety, health, and environmental affairs are clearly located.

Safety, health, and environmental issues are interlinked activities. Safe operations are at the core of good environmental performance, and DuPont's commitment to safe operations goes back to its founder.

The emphasis on safety has been effective. Since the early 1900s when record keeping began in our company, our safety performance has been steadily improving. From this long and intense experience, we have distilled principles that we think can be applied by every company and in areas other than safety. They include:

* All accidents are preventable. While progress from year to year in reducing accidents at DuPont is gratifying, we continue to set a goal of "zero" injuries, and will never be satisfied with less.

* Safety is a responsibility every employee must share. The Chairman of the Board should be the chief safety officer. He should also be the chief environmental officer. At the other end of the spectrum, every employee, no matter how modest his assignment, should be made to understand that continued employment requires meticulous adherence to safety procedures.

* Safety training is essential for all employees, including those in jobs where risks may seem remote.

* A safety program must include inspections and audits. Prompt corrective action should be taken.

* Safety off the job is as important as safety on the job. Training programs should reflect this belief.

* People are the most critical element in a safety program. The safety program should be an employee program which they manage and follow for their own benefit, as well as for the company's benefit.

Safety should be closely coupled with a comprehensive program in occupational health. To provide services that are needed today, an occupational health program should contain toxicology, industrial hygiene, medical care and surveillance, and epidemiology. For example, our Haskell Laboratory for Toxicology and Industrial Medicine tests some 600 chemicals a year for toxic effects and sets exposure levels to protect our employees and customers. Haskell data are being used increasingly to provide protection for neighboring plant communities and the public at large.

The industrial hygiene program encompasses "designing in" safeguards in engineering processes, providing personal protective equipment, and training employees to be sure they understand the nature of the materials they work with and follow safe handling procedures.

There is also a need for employee health care and for routine and specialized physical examinations for employees. A medical surveillance program, especially for employees exposed to potentially hazardous materials, will provide additional protection. An epidemiology program studies the causes of disease and death among employees.

DuPont views the environment and communities in which we operate as a trust. Industry's economic viability will depend on how well we manage the environmental consequences of our activities.

The effort is costly, in time as well as money. For example, DuPont's worldwide capital investment in environmental control facilities totals more than $1 billion. We have the equivalent of more than 3000 employees worldwide working to ensure that environmental safeguards are adequate. We also spend more than $600 million a year simply to operate our pollution control facilities and to support research to develop engineering solutions to environmental challenges.

Early in my comments, I referred to additional benefits corporations realize by accepting and conscientiously discharging their environmental responsibilities. These benefits include:

* Treating people as individuals. We feel we cannot design a successful program in any area of safety without first trying to understand how the human mind works, how people do their jobs, and how factors such as stress, fatigue, and general well-being on or off the job affect the employee's performance. This pays off, too, in getting employee feedback and initiatives on environmental programs.

* Improving process designs through safety and environmental considerations. Technical safety analysis requires that design engineers, operators, and maintenance people work together and share insights and experience. And it increasingly means that we take into consideration the potential impact of process hazards beyond the plant gate. By working across the lines of functional expertise and by looking outward to the community, we end up not only with a safer plant, but with one that is more genuinely integrated with the world around it.

How a company, including DuPont, organizes and manages safety, health, and environmental affairs depends very much on the size and complexity of its business operation. The qualifications and on-the-job training requirements for personnel to be involved and make meaningful contributions in

facility inspections, incident investigations, and process changes varies with the complexity of facilities and processes, especially our chemical processes at DuPont sites in New Jersey.

We do not perceive benefit to the workplace or to the community from enactment of specification standards as contained in the proposed bill. DuPont does believe that all organizations would benefit from written policies, clearly assigned safety, health, and environmental responsibilities, and performance-based regulatory standards.

We believe that safety, health, and environmental concerns will be solved through the same commitment and concerted action I have touched on. There is a strong and growing sense of corporate responsibility for the environment. This commitment, coupled with responsible action by governments, sensible regulation, and strong enforcement where needed, and continued concern and support by the public, will find solutions that will assure a cleaner, safer environment for us and for the generations to come.

Thank you.

ASSEMBLYMAN SMITH: Thank you, ma'am. Mr. Bondor?

D O U G L A S S. B O N D O R: Thank you, Mr. Chairman, for the opportunity to present testimony on this proposed legislation.

My name is Douglas Bondor. I am the Manager of the Environmental and Safety Services Department at American Cyanamid Company's Bound Brook plant. I have a master's in environmental health; I am certified in the comprehensive practice of industrial hygiene; and I am the Chairman of the Somerset County Hazardous Materials Advisory Council.

My background is in the area of industrial hygiene and safety. My testimony will, therefore, focus on the workplace safety and health aspects of the HELP bill.

Industrial hygienists and safety professionals operate under a code of ethics. They recognize that they have a

primary responsibility to protect the health and safety of all employees. Safety programs are built on a foundation of trust, cooperation, and involvement of employees at all levels of the organization. The first line supervisor is a key person in the program.

Enactment of the proposed HELP legislation in its current form will create practical barriers to employee involvement in a safety program by mandating a rigid bureaucratic framework for addressing safety suggestions and concerns. This tends to stifle individual openness and interaction within the safety program.

Let me address the impact on activities of safety and industrial hygiene professionals: The paperwork and record keeping requirements under the proposed legislation are substantial and are expected to prove burdensome upon facility safety, industrial hygiene, and environmental professionals. This excessive emphasis on paperwork reduces the efficiency of safety and health professionals and hinders their availability to do the job they are hired to do; that is, to recognize, evaluate, and control safety, health, and environmental hazards.

As an example, section 31 b. of the proposed law requires that hazard prevention advocates be informed in advance of, and be given opportunities to review, "any industrial hygiene and environmental monitoring and medical surveillance protocols." Section 31 c. requires that the hazard prevention advocates be informed of all hazard identification training programs, and that, "The hazard prevention committee shall have the authority to review and approve all hazard identification and prevention training programs consistent with the law."

The requirements of sections 31 b. and 31 c. would greatly hinder the industrial hygienist's flexibility to rapidly develop new air monitoring techniques and strategies or to incorporate new information or improvements into a revised training program or procedure.

In short, having a committee vote on how to run the minute details of a safety program is just not practical and may actually decrease, rather than increase, the safety and health of the employees being served.

Secondly, looking at the impact on the supervisor's key role in the safety program, disruption of the supervisor's important role to train employees in workplace hazards and controls may result from enactment of section 36 b. of the proposed legislation. Many facilities use the "train the trainer" approach whereby safety professionals develop an overall training program and train supervisors to present the programs to their employees. In this way, the supervisor takes an active role by teaching the training program to his or her own work group.

In addition, the supervisor reviews not only the general information and concepts, but also the specific hazards and precautions within their work area. This reinforces the supervisor's knowledge of, and commitment to, safety and health within the work group. Section 36 b. of the proposed legislation would effectively prevent supervisors from engaging in hazard communication training by restricting such instruction to "experts," who may not have the intimate knowledge of the specific workplace operations, hazards, and safeguards that the supervisor has.

Management of change: The ability for an organization to manage change in its operations and facilities in a safe, effective, and timely manner would be severely impacted by enactment of section 39 a. of the proposed legislation. Section 39 a. requires that the hazard prevention coordinator and each qualified community organization be given written notice "prior to final decision and at least 60 days in advance of introduction describing potential hazards or releases caused by the reasonably anticipated introduction or alteration of new machinery, equipment, processes or methods and chemicals, the

use or discontinuance of use of vendors and subcontractors, and the expansion or contraction of the facility. The written notice shall include an evaluation by the covered owner or operator of hazards anticipated to result from the covered owner or operator's decision: alternatives considered and reasons for utilization or rejection of the alternatives; and methods to be used to prevent or abate potential hazards, including, but not limited to, additional training."

Enactment of section 39 a., as proposed, is duplicative of existing regulatory requirements requiring hazard evaluation and change notification under the Toxic Catastrophe Prevention Act, Resource Conservation and Recovery Act, State air pollution control regulations, and State water pollution control regulations. Addition of another burdensome set of requirements will effectively stifle innovation and hamper the development of new or improved processes and products within the State. Research and development and pilot plant activities, in particular, would be adversely impacted by the section 39 a. requirements due to the constantly changing nature of their activities. This section may well be unworkable.

Finally, the impact of the "imminent hazard" provisions: Section 40 of the proposed legislation, outlines the procedure whereby a hazard prevention advocate may shut down an operation believed to pose an "imminent hazard." Following the shutdown, an inspection of the alleged hazard situation must be conducted by a State or Federal agency in order to restart the operation posing the alleged hazard. The definition of "imminent hazard" under section 3 of the proposed legislation is defined as, "Imminent hazard means a hazard that poses a material risk of: immediate or delayed onset of serious physical injury, including, but not limited to, an exposure to substances that are suspected to, or known to, have a carcinogenic, teratogenic, or mutagenic effect on humans or

animals; an unusual release; or property damage in excess of $5000."

This definition of "imminent hazard" and the manner in which it may be applied under the proposed legislation is so broad that it may be abused, giving rise to facility shutdowns as a result of arbitrary, unscientific determination of "imminent hazard." For example, measurements of employee exposure to an animal mutagenic chemical may reveal detectable levels well below the established permissible exposure limits for the chemical. This could be claimed as an "imminent hazard" and the operation shut down because an "exposure" to the substance occurred -- however tiny -- even though the actual exposure is in compliance with an established OSHA Permissible Exposure Limit or ACGIH Threshold Limit Value. This type of "imminent hazard" determination could disrupt the empirical and scientific foundations upon which the industrial hygiene, safety, and environmental disciplines are based.

Safety and industrial hygiene professionals are trained to recognize and evaluate imminent hazard situations and apply the appropriate short-term and long-term corrective actions based on the degree of hazard involved.

Existing regulations such as the OSHA procedures for responding to anonymous employee complaints already are successful in providing similar protections against alleged imminent hazards.

Enactment of the proposed legislation would create yet another layer of redundant regulatory requirements causing duplication of effort, extra paperwork, and loss of productivity. Existing regulations in this area are felt to be adequate.

Thank you for your attention. I'll be glad to answer any questions.

ASSEMBLYMAN SMITH: Thank you, Mr. Bondor. We have Mr. Montague and Mr. Mack present? All right, we have Peter

Montague, with the Environmental Research Foundation, and Paul Mack, with the Delaware Valley Clean Air Council, to discuss how Local Emergency Planning Committees may be approached.

P A U L M A C K: My name is Paul Mack. I don't see Mr. Montague right now so I will--

ASSEMBLYMAN SMITH: All right.

MR. MACK: I represent the Delaware Valley Clean Air Council, which is a 22 year old nonprofit, environmental organization devoted to protecting the public's health by providing education on the adverse effects of air pollution, overseeing the activities of government environmental agencies, and empowering citizens to advocate on their own behalf. The Council is affiliated with the American Lung Association of the Delaware Valley.

For 10 years, under contract with the Department of Environmental Protection and others, the Clean Air Council has distributed to the media the Daily Air Quality Report for the Delaware Valley. This report includes four criteria pollutants. The New Jersey section is based on seven reporting stations in southern New Jersey. This provides a limited means for the regulatory agencies to monitor and enforce the standards in existence for a few pollutants on a region-wide basis.

This network has two major weaknesses, however, as a system for ensuring that citizens breathe the clean air which they have a right to. First, the monitoring stations are too sparsely located to really analyze the air in particular communities. I have included a map of this network to illustrate this point. Secondly, the pollutants analyzed do not include many of the pollutants which people are forced to breathe, including some of the most dangerous.

This problem is often apparent when the Council is asked by community members about the quality of the air in their immediate neighborhood. For this, the existing air

sampling and enforcement system is of little help. The Community Right To Know data represents a major step forward, by giving citizens an indication of the pollutants which represent a potential threat to the health of their community.

Data about pollutants is only useful, however, when there is a means to act on that information. Due to the lack of standards, and Department of Environmental Protection Agency staff limitations, a means to instigate change when problems are identified is now lacking. The Hazard Elimination Through Local Participation Act provides the needed mechanism for that change. Without requiring a significant outlay of money, or imposing solutions to local problems, the bill simply provides a process for the community, workers, and facility operators to reach an agreement on how to provide the most healthful environment possible for the benefit of all.

Distributed throughout New Jersey is the State run Air Sampling and Continuous Air Monitoring Network. Let us not forget that citizens living around facilities which release toxic chemicals make up a walking, living, breathing, air monitoring network, whether they wish to be or not. The Clean Air Council strongly urges you to support the HELP bill, and empower those citizens to act on their right to breathe clean air.

Thank you for your attention.

ASSEMBLYMAN SMITH: Thank you, Mr. Mack. One last call for Mr. Montague, is he here? (no response) All right, Mr. Montague not being present, is George Wooley, from the Ciba-Geigy Union Safety Committee here? (no response) All right, how about from DuPont, Deepwater, Carl Wentzell? Did Mr. Wentzell already speak? (no response)

Okay, from the State Chamber of Commerce, Clare Schulzki? Clare are you here?

C L A R E S C H U L Z K I: Mr. Chairman and distinguished members of the Committee, my name is Clare Schulzki, and I am

Associate Director of Government Relations for the New Jersey State Chamber of Commerce. I'll be brief in my statement. I'll just give you a summary.

UNIDENTIFIED SPEAKER FROM AUDIENCE: Could you speak up so we can hear you?

ASSEMBLYMAN SMITH: You have to speak right into the microphone.

MS. SCHULZKI: Okay. The State Chamber strongly supports health and safety in the workplace. This should go without saying. There are considerable laws that already guarantee safety in the workplace. However, we believe that the HELP legislation as drafted is unnecessary and duplicates Federal initiatives.

OSHA was specifically designed to insure safe working conditions for employers and employees. Under the Worker and Community Right to Know, companies are required to have emergency planning notification, emergency release notification, and to report on chemical releases into the environment. Public participation is also guaranteed within the function of LEPCs.

Perhaps the most serious concern that we have with this bill is the formation of self-appointed, qualified community organizations. We believe that it is unnecessary and unfair for any self-designated organization to have access to a facility and its records. This would unnecessarily repeat the inspection powers that the DEP already has, and proposed for the LEPCs.

Another concern that we have is that there is nothing in the bill to limit the number of QCOs that would have the right to inspect facilities. These inspections, in addition to those of the DEP and the LEPCs, would be countless.

We also believe that the hazard prevention committees, HPCs, are unnecessary. Most companies already have their own safety and health committees. In the chemical and petroleum

industry they have their own emergency response brigades. Forming an additional committee of 2 to 14 people will be a repetitive and time-consuming effort.

We see enormous problems with each member of the hazard prevention committee having the right to close down a particular process, or even the entire facility if they feel, suspect, or believe that a hazard may exist. That's too much authority to invest in one individual. That's one person, not even a majority of the committee, who would be able to shut down a facility which could not be restarted until a government official approves. Because it's the company which is responsible for all actions, we believe that it's management who should make that final decision.

In summary, we oppose S-2058, the HELP bill, because we believe that the intent of ensuring safety in the workplace is already met with OSHA, New Jersey Right to Know Act, and through SARA, Title III. Facilities have their own health and safety committees already in place.

We vehemently oppose QCOs as outlined in this legislation. We recognize the well intention of this bill, but believe it's simply unnecessary. Thank you.

ASSEMBLYMAN SMITH: Thank you, Ms. Schulzki. Is Vince Gallagher present? Mr. Gallagher, I understand that you are a former OSHA compliance officer? Is that correct?

V I N C E N T A. G A L L A G H E R: Yes, sir.

ASSEMBLYMAN SMITH: All right. Take it away.

MR. GALLAGHER: I worked for OSHA for 12 years and made 792 OSHA inspections. I have a master's degree in Occupational Safety and Health, and I have consulted for labor unions, for lawyers, for United Nations agencies in Latin America, the World Bank, five governments in Latin America, and confederations of labor in Peru and Colombia. I am here today because I feel very strongly about worker participation.

There is some question whether the emperor is dressed, or whether the emperor is naked. I want to make a brief statement about some obscene parts of the emperor.

We heard remarks from the DuPont Corporation about how things are there. I've done consulting for that union, and in '78 when I worked for OSHA I went to work on an asbestos related problem -- looking for asbestos related disease among workers. None were recognized by the company physicians, not one. This day, there's about 500 workers who are either suing the company doctors, or have brought workers comp suits because they have asbestos abnormalities related to asbestos exposures.

The company was taking x-rays but not reading the x-rays. They didn't tell the workers of what disease that was there. This same company has hundreds of cases of bladder cancer. This same company has hundreds of workers exposed to tetraethyl lead. This same company does not today recognize the union's safety and health committee. This is what we are talking about; workers participation in the systems that affect their health.

The United Nations in 1949 made strong recommendations to governments to pass laws to give workers the right to participate in the systems that affect their health and well-being. In 1981 they reiterated the same thing. In my testimony, which I will distribute to you folks in a short while, there's-- References are included in there.

OSHA and the National Safety Council have long ago recognized the need for worker participation as a fundamental element in occupational and safety health programs. I can't understand how safety and health professionals could not want to have legally required, systems that have been recognized by the United Nations, by OSHA, and by the National Safety Council -- the three highest safety authorities that I can think of. The United Nations states, "Workers have an indispensable role."

Countries which have required safety and health committees to be recognized, with functions very similar to the functions of the hazard elimination committees -- hazard prevention committees are: West Germany, England, Sweden, Finland, Canada, France, Spain, and other developed countries. Even in Latin America; Colombia, Peru, Bolivia, Uruguay, and Mexico have it established by law. We are not talking about such novel legislation here.

I agree with the United Nations when they say that, "National laws can't provide a complete and effective solution to in-plant problems."

OSHA's safety standards now come from American National Standards Institute standards, which for the most part were adopted before 1970. These standards were considered by their authors to be minimal. They are economically and politically compromised and they are necessarily lagging behind the latest developments in safety technology. Unfortunately, they are the maximum required by OSHA.

The majority of safety standards and safety problems in a workplace are simply not covered by OSHA's standards. Since 1985 I have investigated over 200 serious accidents. Most of the casual factors in these accidents did not violate OSHA standards. Regarding health hazards, OSHA has standards on about 500 toxic chemicals. There are over 50,000 different toxic chemicals in use in factories today.

Even if OSHA had standards for all the hazards, with about 36 safety specialists and about 28 industrial hygienists in New Jersey, an employer can wait on average about 50 years to see an OSHA inspector.

OSHA addresses the symptoms of a problem, not the root causes. The root causes lie within the management system; that is, within the relationships of the people in the factory. Time and time again, I've seen citations issued, conditions corrected, only to recur in a short time because there was no

corresponding change within the values of the management system. This bill goes toward making systemic rather than symptomatic changes.

OSHA can be expected to see the symptoms of a problem if they happen to exist when the inspector passes through. They can be expected to apply a standard if one exists and to issue a penalty if the circumstances warrant it. OSHA inspectors do not live with the hazard. They are not affected by the hazard, and they don't know the people who suffer injury and disease.

What OSHA does is important and necessary. But even if they doubled or tripled their staff, they still would have only a minor presence in any particular workplace.

If I've learned anything in my 20 years in occupational safety and health, it's that the people who are exposed to the hazard have an extremely important role to play in the hazard control process. I have learned much more about hazards and their controls from the people exposed to the hazard than any other source. This bill provides a mechanism for inclusion and empowerment that goes well beyond OSHA's very limited role of enforcement and attempts to make positive systemic changes.

Next month, next year, three years from now, or maybe five years from now, everyone here today in this room will read of an explosion, fire, or toxic release caused by an accident not far from your home. We now have the opportunity to play a role for the prevention of these accidents, to be on the right side of this question.

For the sake of the people who will suffer paraplegia, quadriplegia, amputation, lung diseases, cancer, brain damage, lung and kidney damage, lead poisoning, and most of all the burn victims. For the sake of the children who suffer birth defects from teratogens and mutagens, for the lost lives, and

dreams, and hopes due to spontaneous abortions. For the sake of your children and our grandchildren's lives, for God's sake, be on the right side of this question.

In this place of all times, in this corridor known as "cancer alley," at this time at all times, when governments throughout the world are allowing people to participate in democratic processes, don't miss the opportunity to be able to say, when you read about the next explosion, that you played a positive role in the prevention of needless suffering by allowing the people to participate. In this great democracy of ours, it's fundamental that the people have a right to participate in their own destiny. Please don't deny us this right.

Thank you very much.

ASSEMBLYMAN SMITH: Mr. Gallagher, your testimony is very compelling. A couple of questions for you: First, how long were you an OSHA inspector?

MR. GALLAGHER: Twelve years, sir.

ASSEMBLYMAN SMITH: Twelve years. And you mentioned a number of countries where worker participation in the safety process is ongoing and I-- You were speaking with great enthusiasm, so I couldn't get the entire list. I got West Germany, England, Spain, and some of the others were?

MR. GALLAGHER: Finland, Canada, West Germany, England, Sweden, Finland, Canada, France, and Spain. There were others that I just didn't include.

ASSEMBLYMAN SMITH: All right. Let me ask the OLS staff to please find out how the worker participation programs are working out in those countries. Do you have any direct experience with the countries themselves, the operation of the committees?

MR. GALLAGHER: I've only worked in occupational safety and health in about ten Latin American countries. I just know what the laws are. I don't have firsthand

experience-- To be honest, in Latin America, there's lots of good laws, but in safety and health very little comes into reality.

ASSEMBLYMAN SMITH: Okay. Well, I appreciate your comments. Any questions for Mr. Gallagher? (no response) Mr. Gallagher, thank you for coming in tonight.

MR. GALLAGHER: Thank you, sir.

ASSEMBLYMAN SMITH: Our next speaker is Mr. Jim Morford of New Jersey SEED. Mr. Morford?

J A M E S C. M O R F O R D: Mr. Chairman, out of deference to the Committee, the staff, and the audience, let that conclude my statement. I submit it for the record. Thank you.

ASSEMBLYMAN SMITH: Do you want to give us a 25-word or less summary?

MR. MORFORD: Nothing. Nothing greatly different, I think. Let the record stand and perhaps when there is an opportunity to discuss it during a working session of the Committee, we might be able to make some constructive suggestions. Thank you, very much.

ASSEMBLYMAN SMITH: Thank you, Mr. Morford.

We have a panel of people who are asking to come forward. Ivey Williams, Shad Agar, Bill Golt, and Rose Marie Theer to describe their experience with workplace case histories, specifically in the asbestos area.

Who would like to take the lead?

I V E Y W I L L I A M S: I'm Ivey Williams, the President of Local No. 155 of the International Chemical Workers. I'm an asbestos worker down in Trenton. Let me give you a case history, or why we are here to support the bill, HELP.

In 1981 the local union requested a team of occupational health professionals from Montefiori Medical Center in New York. The team was headed by Dr. David Michaels to conduct a walk-through of the plant, and make specific

recommendations. The recommendations made at that time were improvement in the ventilation systems, personal protective equipment, and dust handling procedures.

In 1983 the New Jersey State Department of Health conducted a walk-through of the plant and reviewed company sampling data. A report was issued at that time recommending improvements in the air sampling program, ventilation system, housekeeping, personal protective equipment, provisions for work clothes, and separated lockers. One for clean clothes and one for work clothes to prevent home contamination, was strongly recommended.

On March 28, 1984, NIOSH, the National Institute of Occupational Safety and Health, got a request from the International Chemical Workers Union. The request was assigned to the New Jersey State Department of Health for investigation. After delays caused by plant access problems and a year-long strike, in February and March of 1986 the investigation was completed.

Chest x-rays of employees that worked there more than 10 years were reviewed by NIOSH certified B-reader. Personal air samples for asbestos were conducted in the plant for these days. Bulk samples were also obtained from clothing of workers leaving the plant.

Seven of the twenty individuals with ten years or more at the plant had consistent findings of asbestos exposure. Two had asbestosis, two had pleural thickness, one had pleural plagues, and two had cancer.

Personal air sampling results indicated asbestos time weight average exposure in the range of 0.6 to 1.56 fibers per cubic centimeter and indicated significant contamination throughout the plant on all operations. The levels documented were above the OSHA permissible exposure limit of 0.2 fibers per cubic centimeters.

On July 27, 1989 Friction Division Products received citations for violations and notices of failure to abate alleged violations of the OSHA Act of 1970. Friction Division Products failed repeatedly to meet the requirements of OSHA standards to protect the workers against asbestos exposure.

After being cited and promising and committing to correct the violations OSHA found, F.D.P. broke its promises and did not correct existing hazards and even allowed new hazards to occur.

Friction Division violated almost every provision of the OSHA asbestos standards in the process of threatening the health and the lives of their workers and their families by allowing the workers to wear street clothes laden with asbestos dust home. There were 113 violations cited at the plant.

The workers were allowed to work without respirators even after OSHA inspection and the Union Health and Safety Committee made it known to the company that is was violating the law. OSHA inspections found exposures up to 15 times higher than the standard allowed.

In the last two years we had a large turnover of people who stayed two to six weeks, would work without protective clothing, or respirators. So, on July 27 of 1989, OSHA posted three imminent danger notices at the plant that put both the company and employees on notice that they faced grave threat to their health.

In conjunction with the imminent danger notices OSHA seeks preliminary injunction to prevent F.D.P. from continuing to operate affected operations until the hazards have been corrected. OSHA also issued a new round of citations with penalties totaling $2.7 million for the latest violations that were found.

Since the company has shown such disregard for previous enforcement actions, OSHA filed a motion with the U.S. Court of Appeals for the Third Circuit, seeking summary enforcement of the previous citations.

This case marks the first time OSHA has used imminent danger procedures in a case regarding health, rather than safety with the fine of $2.7 million.

With this bill, HELP, Hazard Elimination Through Local Participation Act, workers will not have to wait as long as Local 155 did, where we had two asbestosis, two pleural thickness, and one pleural plagues, and two had lung cancer.

This is one of the reasons why we need the bill, HELP.

Thank you.

ASSEMBLYMAN SMITH: Did the fines ever get collected?

MR. WILLIAMS: Not yet. They are still going in Washington on it.

ASSEMBLYMAN SMITH: Thank you.

R O S E M A R I E T H E E R: My name is Rose Marie Theer. I'm a board member of the White Lung Association of New Jersey, a nonprofit organization for the victims. We favor this bill, HELP.

First of all, I would like you all to know I am not a speaker, a lobbyist, nor have I been paid to come here to speak. There is an old saying you have heard hundreds of times, I'm sure, "The victim was always the other person, not me." But as we all found out, this could be your husband, wife, your children, or yourself.

Nothing in my years of life had prepared me for this anguish of that moment in 1984, and the worst came, August 1, 1986, a date I will never forget. My husband, like so many millions of people, went to work every day to support himself, his wife, and children. He was an asbestos insulator. You see, right now I am a survivor, an asbestos victim, and all I have left of this wonderful, beautiful human being is his ashes.

I also have asbestos. I was operated on and diagnosed as having asbestos related disease. I did not choose to have asbestos disease, nor did my husband choose to have this and

die from it. You do not have to be an asbestos insulator to get this. My job was a wife, mother, and a homemaker. My husband was our sole provider.

From The Pottsville Republican, a newspaper, a Dr. Hauge, (phonetic spelling) University of Texas pathologist, who has been conducting research for more than a year on SIS, infant death syndrome, has autopsied bodies on 24-month-old infants with asbestos. Please tell these parents why their innocent babies had asbestos in their lungs.

Also, Richard Barnett attended Walt Whitman School, in Yonkers. He graduated and went to become a physician. At age 31 he died of mesothelioma. What a high price to pay for an education. As you can see, I am bitter.

You hear and know people who worked in maintenance, plumbers, steelworkers, etc. and have asbestos disease, mesothelioma. And from what I see on TV, that sand that you buy for your children to play in also contains asbestos fibers. And yes, once again, no one was ever informed that asbestos was dangerous and you could die from using, or not using the product, or that you can give it to your family.

He worked in good faith, like so many other people have, but the fraudulent misrepresentation, concealment, and willful omission made by the opponents of the bill regarding the safe nature of these products is the big cover-up.

No one knows the horrors of asbestos disease unless you are a victim yourself. Hope keeps you going, but when the doctors tell you it's incurable and untreatable, your hope is all gone. Our lives have been crushed and everyday's life is the darkest hour. Nothing could cure us of this dreadful disease, and you ask yourself, how could this happen in America?

I cannot let go of these painful memories. I cannot eliminate any line of reasoning that promotes anger and hurt feelings. I can't be reasonable to the ones who killed my husband and is slowly killing me, and thousands of innocent people.

The opponents of the bill are not looking for the truth; their job is to make us look like we are liars. They have to try to destroy us to deceive and to encourage the people to misbelieve the truth. It isn't enough that so many beautiful people have died already. They want more. What a price to pay -- death and disability, just for going to work and doing your job.

The criminal offender, culprit, whatever name you choose to use, wants all the rights. But the innocent victims are persecuted, paying the highest price, death. When does justice triumph for innocent victims? Or are you going to let the system only protect the perpetrators? Our answer is, no.

They act like heartless and indifferent bureaucratic monsters. They have destroyed lives and created agony and anxiety. It's our turn to stop them now. It's our turn to act now. They want you to believe that some products are safe and won't hurt you, even if you had a small exposure. It's like telling a woman, "Are you pregnant, or are you a little bit pregnant?" "Are you dead, or a little bit dead?" There's no such animal.

It's too painful to remember and too hard to forget what we went through. Not only us, but so, so many other innocent victims, to deprive you of a human body and mind. Remember, human life has a value. It's the most valuable asset on this earth, and no one has a right to take it from you but God, Himself. Our nation established that no one has the right to take a life, nor can it determine when a person's time to die is.

We can't roll back the clock. I can't change what has happened in the past. But we are here, and we can change it now to help save lives of innocent men, women, and children. The destruction of any life should not be tolerated. I couldn't protect my own husband or myself. Your life will never be the same again, thanks to these people who profit on human lives, if we don't change the law.

But we are here. We are able to change the law so the innocent victims don't have to go through what I call, hell; a bottomless pit of torment. They want to strip us of all human respect and dignity. What price do you put on a human life? Corporate profits?

No one has been more abused than all the people who had or have asbestos. Our liberties, mine and hundreds of thousands, were violated by not telling us that this could kill us some day. Our freedom of choice was taken.

Is fairness the American way, or is it corporate profits at human lives? We have to pass this law. We owe it to our loved ones and ourselves, that our faith in the judicial and legislative system prevail, and won't be destroyed; that victims are not gypped by justice or by big corporations who will do anything to stop justice. We have to have structure and law. We have the right to protect ourselves. I believe justice should be fair to all, and each person is entitled to respect and some measure of dignity.

Opponents deny, deny. That's their trait, to deny the truth when they are the guilty ones. Innocent victims pay the highest price in disability and death. Every single one of us has an obligation that this doesn't happen to anyone else. And fight for justice, not corporate profits and lies and lies.

It is important to recognize the lack of humanity and the devastating impact such policies have had upon the individuals involved, as well as their families. Laws have to be enacted to relieve human suffering and death, not to cause it. They have no remorse for what they have done and are still trying to do. Power belongs to the people. Show them that we count. Or are you going to listen to these politicians' words that have no meaning to them? Dear God, I hope not.

We aren't going to take their harassment any more. We know the delays are legal maneuvering among the opponents. They try to shift responsibility to one another. We were the pawns, but them days are over.

Business World, ABC News, in 1988. This is the punch line for all the asbestos victims, when it was said by Steven Awe, (phonetic spelling) "That Chapter 11 did what it was designed to do, to keep the company healthy and alive." I wanted to vomit.

What happened to all who have died and are suffering from this horrible disease? Chapter 11 didn't keep them healthy, and most important, alive. This is so very important to all the working people in this country; that we have to have a bill to protect ourselves; the Right to Know Act, the Right to Act Law.

If we had this years ago, so many of our loved ones would be here today and I probably wouldn't be here talking to you, and my husband might have been standing here, alive today, instead of in this box. (Witness displays urn containing deceased husband's ashes.) The Right to Act Law, years ago. It's long, long overdue.

We remain alone in our sorrow. We feel lost and abandoned. We cannot replace the void in our hearts. Don't let this happen to you. The dead teaches the living, the more you love the harder you fight to make things right; to help someone not to feel the pain and suffering you have endured.

What I have said here today has come from my heart and soul and what I know to be the truth. I just hope and pray that you did listen and know the truth that was told to you. In my heart I still carry all the memories of my best friend, my love, my husband, Joseph Theer, who once lived on this earth. Please don't let all who have died, die in vain. Also please remember one thing, death is forever. There is no second chance and no going back.

Thank you for listening to me, and I hope I have made a difference for all of us.

By the way, his tool bag is still here, but he's not. (Witness displays a tool bag.)

ASSEMBLYMAN SMITH: Thank you, Mrs. Theer.

S H A D A G A R: My name is Shad Agar. I'm a retired insulator from DuPont plant in Chambers Works. I didn't know what I was going to talk about. The union contacted me because I was involved in litigation against the company. I figured I would just come up and listen and hope that I don't get called on to talk first. When the lady from DuPont spoke, it gave me some things to talk about.

She spoke about on the job safety. I was in a safety meeting in a room about one-fifth the size of this one, with an eight foot high ceiling and 50 some people in there, most smoking. I complained to my foreman that the smoke bothered me. He said, "Go see the general foreman." The general foreman said, "Well, you have to stay. Sit next to me. It's not bothering me."

I said, "Well, you're smoking cigarettes. Certainly it's not bothering you."

He said, "Well, sit by the door."

I said, "Well, all the smoke's going out the door. It's going to come right by me." So I said, "Look. Do what you have to do. I'm leaving the safety meeting."

So he sent me home for three-and-a-half days without pay, put a written warning in my record for leaving the safety meeting. Before they sent me home, they called the plant medical director. They asked him if I had respiratory problems. He said, "No, absolutely not." So then they sent me home for three-and-a-half days without pay. Two months later they notified me that I had an asbestos related disease.

The written warning stayed in there. I filed a grievance, and went through the grievance procedure for almost a year. One day I came in -- I got out of the wrong side of the bed -- and I said to my foreman, "Look. I want to talk to the plant manager. I want my pay back and I want the warning out of my record."

He said, "Well, you can't do that."

I said, "Well, you better hurry up and call someone and find out, because if you don't I'm going to go to all the newspapers and all the television stations in the Delaware Valley and tell them my story. They knew I had asbestosis and they forced me to sit in smoke filled rooms."

They got the message, they took me up into the administration building and I talked to the plant superintendent and the head of employee relations. He said, "Well, we can't give it to you today, can you give us a little bit of time?"

I said, "How long?" "Two days?" In two days they gave me my money back and they gave me my written warnings.

On off-the-job safety: I had organized the lawsuit against DuPont and all the asbestos manufacturers. I wrote a letter. I contacted all the people who I knew were notified who had asbestosis or asbestos related diseases. I got ahold of Bill Golt here, who was the president of the union and got use of the union hall. I invited people from a law firm down to see what our rights were. From that time on the company was on me like stink on manure.

Every time I turned-- Guys didn't want to work with me because they knew the company was laying for me because I was a rabble rouser, a trouble maker, whatever you want to call it, and they were afraid that they would get in a jam, too.

I called in sick one day. I have a history of blood clots. I had been hospitalized three times with blood clots in my legs. I had another one and my wife called in to tell them I wouldn't be in to work. Before I could go to my doctor whose hours didn't start until 10:00 o'clock, my general foreman called me up and said, "We want you to come in and let plant medical examine you."

I said, "Pete, I've got a blood clot."

He said, "Well, you don't know that. You haven't been to the doctors yet."

I said, "Pete, did you ever have a toothache?"

He said, "Yeah."

I said, "Did you know you had a toothache?"

He said, "Yeah."

I said, "Well, I know I've got a clot."

I went to the doctors, and he told me that as soon as you get out of the doctors, you come down to work. A 26 mile drive.

I said, "Pete, I've got a blood clot. I can't"

"Take your time and drive safe."

I said, "I'm on medication and I get dizzy."

He said, "Well, just don't go fast in case you run off the road."

So I went to the doctor and the doctor said, "You get up to the hospital and get a veinogram (sic) done." And he said, "They are going to admit you. You are going to be in there awhile while they dissolve the clots."

I had to drive to work, go to plant medical. They said, "Are you crazy?"

I said, "No, they made me come down."

The reason that he wanted to get me on the plant, they wanted to give me another written warning. If you get three of them, you're fired. This made two. He wanted me on the plant, because if I went in the hospital he couldn't have given me the written warning.

Another thing on the asbestos: I noticed that DuPont had a wage roll employee testify for them, or read something for them. They have a knack of doing that. When all, we had-- At the point I'm talking about, we had, like 350 people in a lawsuit, and many, many more who never filed on this asbestos related diseases. They got a wage roll employee to

make a video tape about him saying that he has the disease, he skin-dives -- they had pictures of him skin diving: "It doesn't bother me."

And do you know what? Shortly after that he had a new boat. Now, I don't know if the company bought it for him, but he ended up with a new boat. It's just the way that DuPont is.

They preach and preach and preach safety, and they could care less. They don't practice it. They never did, and I don't think they ever will. That's all I have to say.

ASSEMBLYMAN SMITH: Thank you, sir.

W I L L I A M G O L T: Thank you for the opportunity of expressing our union's feelings on this very important legislation, HELP.

My name's William Golt, I'm the President of the Chemical Workers Association, an affiliate of the International Brotherhood of DuPont Workers.

The Chemical Workers Union represents 2300 union members at the Deepwater, New Jersey site Chambers Works, in Salem County.

I am also Vice President of the International Brotherhood of DuPont Workers, which is affiliated with nine other DuPont sites throughout the country, including Repauno site in Gibbstown, New Jersey, and that's in Gloucester County.

One day last week, I was approached by DuPont management. He asked, "Why would your union support legislation like HELP? Your union does a lot to protect the safety of the work force. This legislation will hurt you and the company. It will bring outsiders in to investigate hazards in the workplace they know nothing about. Also, it is hard enough doing business in the State of New Jersey because of the stringent environmental restraints that are already in place."

Well, to me it is a matter of trust and loyalty that makes workers and the community believe industry will care for our safety and health, without any other considerations. But we all know that's false.

Roughly 80% of the work force in the State of New Jersey are not unionized, therefore leaving a void in the check and balance of health and safety, this being reason enough to support such legislation.

If a union does its job to protect the safety and health of its members, it also protects the health and safety of the surrounding community.

Our union believes a good feature in this bill is subsection 38. It would give us the opportunity to participate in the employment interviews when the company employs professionals who will be ultimately responsible to protect our safety and health through various programs.

After 10 years of litigation involving asbestos related illness, it was proven in court the workers who believed the company doctors were really "doctors," protecting and safeguarding their health, were betrayed. Subsection 38 will give us a chance to at least review and investigate before we sanction such employment.

Over the last 10 years the Chemical Workers Union has had some severe health problems on the Deepwater Plant site. To name a few; asbestos related illness, which led to a long drawn out court battle, and also lead poisoning, which resulted most recently in heavy OSHA fines.

I believe this legislation should be considered as preventative maintenance. Millions have been spent in unnecessary litigation, why not spend the millions on preventing the hazard? It is reasonable to believe, if the State of New Jersey is to become a leader in obtaining a safe environment, this legislation must pass.

I thank you.

ASSEMBLYMAN SMITH: Thank you, sir. Thank you all for coming. Is Mr. John Vellekamp present? Mr. Vellekamp, I understand that you represent the Government Interaction

Committee for the American Institute of Chemical Engineers, North Jersey Section. And if you'd come forward, we'd appreciate hearing your testimony.

J O H N H. V E L L E K A M P: Good afternoon. I wish to thank you for the privilege of expressing my views on health. I'm a chemical engineer, and I'm an industrial engineer. I have over 40 years of experience in the chemical industry including the position of plant manager for four plants, three in New Jersey and one in Maryland. I am now retired but I keep active in my profession as a member of the American Institute of Chemical Engineers, the American Chemical Society, the American Waterworks Association, and the American Industrial Hygiene Association. I've always enjoyed my work as a chemical engineer and I am happy with my successes.

Today I am here to represent the Government Interaction Committee of the North Jersey Section of the AICHE. We only received notice of this hearing a few weeks ago and did not have time to review the HELP bill as a committee or a sub-committee, but at our last monthly meeting of February 26, members expressed many of their thoughts and requested that I represent them, since I was the only one with free time.

I'll take notes of the hearing and then present the document to the committee before the hearing period is closed. Therefore, some of the views expressed represent some of mine.

The GIC Committee of the North Jersey Section is one of the most active in the nation and it has received many awards. We meet the last Monday of every month at NJIT and review all regulations, environmental problems, draft papers, and circulate them through various legislative representatives. We have solicited volunteers from our 1000 North Jersey Section members to work on LEPCs, hazmat teams, hazmat committees cooperating with county emergency planning management.

In way of review, there are now in place laws, regulations and programs of the Federal government and the State, to deal with hazard eliminations to protect employees, the community, and the environment.

Occupational Safety and Health Act: They cite over 400 chemicals in their tables. They cite permissible limits per eight-hour period of worker exposure. There is a Code of Federal Regulations, of the Labor Department, which is the bible for all sorts of conditions affecting the worker. There is training for the worker required by OSHA standards and training guidelines. Outlines of training required: explosions, dangerous atmospheres, personal protection equipment, pressure vessels, fire protection, electrical, noise, and so forth.

OSHA has drafted new regulations. The storage, handling, and processing of highly hazardous chemicals. There are 152 chemicals on that list. The regulations go into the technical necessities of handling these chemicals. All kinds of preventive actions, training, somewhat similar to the New Jersey TCPA, but more on that later.

The Environmental Protection Agency -- the EPA -- has put into place many regulations to preserve the environment. The most important is Title III, The Superfund Amendments and Reauthorization Act of 1986 -- SARA, Title III. Hazardous materials emergency planning is the goal. There are all sorts of plans and programs. The Federal Emergency Management Agency, FEMA, has contributed as have EPA, Chemical Emergency Preparedness Programs, CEPP, Department of Transportation Emergency Response, and even the Chemical Manufacturers Association with its Community Awareness and Emergency Response Programs.

SARA is a program using volunteers to a great extent and involves planning, hazard analysis, hazard identification, vulnerability analysis, and risk analysis. All of the

information is submitted by the industrial facility including material safety data sheets, facility resources, community resources, and emergency plans. The entire local plant is drawn together by LEPCs, Local Emergency Planning Committees, 15 to 20 members; governmental, health, hospital, transportation, fire, police, emergency management, industry, technical experts, community groups, labor, and public information. Most important, the plant must be updated constantly.

The EPA is also involved with underground storage tanks, waste management, and a host of other concerns of the environment.

In the State of New Jersey we have the Worker and Community Right to Know Act. Industry is required to perform workplace surveys of all hazardous substances. There are 239 hazardous substances on the list for New Jersey. Environmental surveys, labeling, education and training, information to employees and the public, hazardous substance fact sheets, inspection, and enforcement. The law covers workers access to information about hazardous chemicals in the workplace, gives community residents and the emergency response personnel, access to the information.

Surveys, labels, and hazardous substance fact sheets enable workers to be better informed to permit exposure to substances present in the workplace. Surveys, labels, and hazardous substance fact sheets enable emergency response personnel to be able to prevent exposure to hazardous substance to themselves and to the community.

Employees will receive education and training about health risk and hazardous substances they are, and may not be exposed to, in the workplace. Information will be useful to employees planning how to better control the workplace hazards, fire fighters planning emergency response procedures, health providers diagnosing their patients, and union and management

health and safety committees, community residents wishing to protect their health.

The Toxic Catastrophe Prevention Act: This is a very involved act with regulations governing the use of extraordinarily hazardous substances. Originally there were 11. The list is now 119 and there may be more added. The use of these chemicals requires detailed planning, risk analysis for the prevention of catastrophic accidents, and annual reporting of such a detailed nature that outside consulting specialists are almost mandatory.

New Jersey DEP, Division of Environmental Air Quality Control: Every vent or stack in industry causing the emission of an air contaminant into the open air has to have a permit from the New Jersey DEP. There are fees, and they have to be renewed periodically. There are grey areas with respect (inaudible)-- There are many other areas of standards and OSHA inspections performed by the Labor Department.

There is the local fire inspection supervised by the State Department of Community Affairs, Fire Safety Code Registration, for which a fee is charged. All chemicals on the Right to Know list have to be reported with the quantities kept, and storage recommendations are made and have to be corrected or the situation will be made--

Now to get to the Hazard Elimination Through Local Participation, HELP. The HELP proposal includes three major provisions: One, clarify and possibly broaden the powers of Local Emergency Planning Committees responsible for implementing the Federal Emergency Planning and Community Right to Know Act. The powers of the LEPCs are quite broad under SARA Title III. Our experience at AICHE, American Institute of Chemical Engineers, is that the volunteers with chemical background and training are not in demand. We have submitted a list of volunteers to the State Police, the governmental organization which is responsible for the program in New

Jersey. We have received little response. My own information in Bergen County, with the 72 municipalities, the County Office of Emergency Management reports 13 towns have not submitted their emergency plans, and only half of the towns have both their plans and the LEPCs set up. Hazmat annexes still face difficulties in implementation.

Two, another goal of HELP, establish hazard prevention committees. These are already, in some form, set up almost all the present Federal and State laws and regulations. We must not overlook the power and the effect of the safety committee. Almost every industry plant has a safety committee that functions. It is required under OSHA. It is required by all insurance carriers. Loss prevention departments of every insurance company require safety committees. Insurance companies make regular inspections.

Please note the chemical industry and the aviation industry each year are the safest industries as rated by the National Safety Council. The nature of their business is such that they have to plan and devise properly.

Third goal: Set up qualified community organizations. Under SARA, Title 3, we already have it. The plan and organization is structured. Under HELP it would be very unstructured and sort of an ad hoc committee.

In conclusion, if there was any funding, as HELP would like to have, it would be better using it for SARA, where there is more control, and by nature, responsibility.

Two, regulation enforcement should be left in the hands of professional regulators.

Three, one more law like this and industry in New Jersey will have to be leaving. I mentioned I was a plant manager in three New Jersey plants. One plant now has moved out of New Jersey and moved their production to Chicago and Georgia. This is all since I have been retired. The other, a familiar cosmetics corporation, has just moved their plant to Virginia. They had two plants in New Jersey.

I have been a resident of New Jersey all my life. I contend that we need industry in New Jersey. We are losing industry in New Jersey, and I do not think we need HELP.

Thank you very much.

ASSEMBLYMAN SMITH: Thank you, sir, for your testimony. Our next group of people to speak: Gary Solecki from the United Auto Workers, Local No. 950, and Bill Kane, United Auto Workers, Region 9. They will be discussing existing labor management agreements to protect workers and the environment.

Mr. Solecki and Mr. Kane, are you here sir?

G A R Y S O L E C K I: Good evening. My name is Gary Solecki. I am a member of the United Auto Workers of America, Local No. 950. I am employed by Rowe International Inc., in Whippany, New Jersey, a vending machine manufacturer. I have a N-2 license for industrial wastewater treatment. I am also the Co-Chairman of a joint health and safety committee.

I absolutely support the HELP legislation because I have seen firsthand how these programs help workers, communities, and companies alike. Working together we have been able to solve many problems that have plagued not only the workers, but the company as well. Jointly we have attacked some high priority problems at Rowe:

1) We have replaced cyanide in our plating operation with a much safer solution.

2) We have eliminated M.E.K. from our painting operation.

3) We have replaced solvent base paints with new powder paint coating.

4) We have replaced 111 Trichlorethelene with a safe, cheaper, biodegradable detergent. And all of these without closing the plant.

5) We are presently working on eliminating methylene chloride and isocyanates from our foam operation.

None of these problems would have been solved without the trust between the company, the union, and the cooperation of management along with the credibility of the health and safety committee.

Solving these problems not only makes a safer workplace, but also a safer community, now and in the future. It takes time and hard work by both the union and by the company to address and solve these urgent and important problems, but the end result is well worth the effort. I hope it's not too late. Thank you.

ASSEMBLYMAN SMITH: Thank you, sir.

B I L L K A N E: Mr. Chairman, before I begin with my prepared testimony, let me just say that I sat here, and I have been to a lot of hearings of this type and I hear a lot of opinions, and I hear a lot of opinions from business on what these types of laws will do. Most of them are just that, opinions; whether professional, scientific or otherwise. I just want to say that the fellow who testified before us didn't have an opinion. A lot of the stuff that he said was just outright untrue. I mean, there's no requirement for safety committees and all of those things, and I was just kind of appalled by that.

Good evening. My name is Bill Kane, and I'm the New Jersey Area Director for the United Auto Workers. My union represents workers in over 150 work sites in the State. We have approximately 20,000 active members. I want to just take--

I was chastised on my way out of the office for putting the incorrect number on this. I just want to say for the record that I left off our members of our affiliate, District No. 65, that has another 10,000 members. The reason I want to add that into the record, it's really not significant to anybody other than perhaps the people who are on this panel, who didn't have the courtesy to stay here and may

oppose this bill and didn't have the privilege of listening and witnessing what I think is the bottom line of this whole thing. That was the testimony of sister Rose Marie Theer. So, those other 11,000 will be told about those people who vote against this bill also, if they live in their district.

I appreciate the opportunity to testify today and appreciate the introduction of a bill that, in my opinion, represents the common sense approach to solving environmental problems in our State. I testify in support of the HELP bill because it represents to us a principle that we have found to be true for a long time: Workers and concerned citizens are the best people to empower to correct the problems that are posed by toxics and the unhealthful and unsafe conditions that toxics and other hazards present.

We have known for years that a system of protection that depends on political appointees for its strength of enforcement is not a very effective way to protect workers' lives and the precious environment. We know that OSHA does not do the job for workers and EPA and DEP do not do the job of properly protecting the environment.

I'm not going to present a political debate about that, about what I believe the reasons are; I believe the facts speak for themselves. What I would like to do is to talk about the concept of HELP, and why I think it will work.

You'll hear from, and you have heard from Mr. Solecki already about the situation in his plant -- about how the contract language in force between his local union and his employer is working. Now, we could have asked any number of health and safety committee persons from the UAW to attend this hearing to tell you about the programs in place at some of the larger employers, such as General Motors, Ford, and Chrysler. In those contracts we have joint health and safety programs that are very sophisticated and very well funded.

In the Big Three contract there is a four cent an hour negotiated cost that is devoted strictly to health and safety. That had a phenomenal result in providing a broad program of education, training, and enforcement, with such things as computerized Right To Know information, computerized OSHA reporting which is available to workers at the touch of a button, national training programs of a large variety on subjects ranging from ergonomics to environmental protection, and much, much more. We have proven that when the issue of health and safety in the environment are paid the proper attention to, success can be had without the need to rely on government agencies that are operating with stripped down budgets. We would not have needed OSHA or EPA if the owners of these corporations had been more responsible to begin with.

Our programs in the Big Three only came about because of the bargaining strength of our union in the auto sector, not because those employers somehow became enlightened. Although they have now seen that our argument of many years that empowering the worker is not detrimental to the business, in fact, it is helpful.

The situation at Rowe International, where Gary works, is not one of an employer agreeing to a contract proposal because of a threat of great bargaining strength being wielded by the union. The situation at Rowe is one of a management that understood that it was in the best interests of all concerned for the union committee person to have the power that Mr. Solecki and his committee have. Mr. Solecki has veto power over any chemical brought into the plant, unconditionally. He also has the power to shut down any operation that he feels is unsafe or unhealthful to his constituents or to the surrounding community and its environment.

He hasn't flagrantly used his power to force his employer into uncompromising positions. The cost of doing business at his plant has not gone up because of his efforts.

And his plant is not shut down, as he stated. What has happened is that he has helped management to learn that he and his committee care just as much about the financial viability of the business as they do, and that a well run program of workers' health and safety and environmental concern is a profitable enterprise in the long run, in addition to its obvious benefits. They did that at Rowe without the luxury of massive amounts of negotiated funds. They did it with very little money and a whole lot of commitment and integrity.

If you were to visit Mr. Solecki's plant he'd probably try to get you to drink the water from his waste treatment plant. I say his waste treatment plant because he acts like it's his system. It reminds me of a guy with a cherry '57 Chevy, the way he operates with this thing. He hasn't been successful in getting me to drink any of the water, but I'd wager that it may be cleaner than some of the public drinking systems in the towns around this State.

We believe that HELP is needed in New Jersey. We have seen what happens when workers are empowered. We know that it works, and we know that they are responsible. We also believe that the community that lives in the vicinity of a work site should have a say in the matter also.

I think that people who think about it, are not very comfortable relying on the agencies of government charged with protecting them.

There are management people -- and there are all sorts of people, and we've heard from them today -- who will tell you that allowing people from the community to enter a work site for the purpose of ensuring that their families will not be in jeopardy, is insane. The cry that these environmental crazies are going to shut us down will probably ring loudly before this bill reaches the Governor's desk, and this is what we believe on that issue.

We believe that allowing people to enter a plant in an orderly responsible way, having them work with the worker representative in that work site, if there is one, is much better than some uninformed or misinformed group taking action that is directly targeted at shutting down a facility without any regard to the economic effect to the workers in the community.

Now there are many perceptions of the three groups that would be involved in the implementation of this bill; labor, management, and community activists. Some think that one group thinks about nothing but jobs, no matter what the costs. Some think that another group thinks about nothing but a maximization of profits, no matter who has to die or become diseased. And some think that one of these groups cares only about turning the State into a national park with no industry, with little or no thought to the economic effects and the social effects such as drug abuse, child and spouse abuse, murder and suicide, that follow a plant closing.

We believe that by putting these three groups together, a saner approach can come about, and the environment can be protected in a manner that, up to now, has only been fantasized.

Will there be problems? Of course there will. Believe it or not, there are people in those three categories who fit those stereotypical descriptions. I saw some of them today. Those problems can be worked out.

I would rather have the opportunity to convince a hard-nosed manager than an hysterical citizen that we can have jobs, we can make profits, and we can protect the environment if we approach the issues calmly and honestly and together. The HELP bill provides that forum.

We don't have a lot of time to waste going after each other's jugular any more. Workers, the frontline soldiers and the first victims of pollution, are dying by the thousands

every year. OSHA hasn't put a dent in those statistics. Our land, our air, and our water has already been polluted, much of it beyond repair. EPA can't correct that problem. Our economy is in need of a major overhaul in the industrial sector or we will be in dire straits in the very near future. Corporate America and the Federal government don't seem to care about that in any type of collective manner.

This bill can't solve all the problems, but it is the beginning of the process that is long overdue; people participating, working together. New Jersey needs HELP, and I commend you for bringing it to us.

That's my prepared statement and I would just like to make a few comments on some notes I had taken while listening to some of the testimony today.

First of all, what the hell difference does it make if it's 8% or 10% of occupational cancer? What difference does it make? It doesn't make any difference. We're dying of cancer from work, we're dying of cancer from pollution and it was a shame that your time got wasted so long talking about whether it's 8% or 10%.

The second thing I heard is that health and safety reps such as Mr. Solecki detract from a program, have too much authority. Management should make the final decision. They disrupt the empirical scientific basis of health and safety practices. I could just tell you that there is a man sitting next to me that debunks all that.

You asked a question earlier of -- I think it was Vince -- about foreign countries, and I made a note to talk to you about worker involvement in a foreign country.

I was fortunate enough to go to Sweden about eight years ago on a health and safety trip. We studied a lot of different ways that they operate. We were sitting in the hotel one evening, and a group of us were sitting around having some drinks in one of the rooms and the maid came in. The maid was

the health and safety rep for the workers at the hotel. The maid showed us the blueprints for the addition that had to be put on the hotel. She also showed us all the analysis of those blueprints from a health and safety point of view, that were given to her by the union health and safety reps and by the government health and safety people, professionals that were supplied and put at her beck and call, because she had to approve those plans before the hotel could put the addition on because she was the health and safety rep. That's the way they do it in Sweden. They do it in similar other ways in other countries.

I heard about self designated organizations, talking about the qualified community organizations being-- It's not good to have self designated organizations, Management should have the final decision. Well, I would just like to say corporations are nothing more than self designated organizations that happened to self designate themselves because they got the bucks and we don't. That's the way that works.

I heard about, the same thing-- I've been involved in the health and safety movement for about 20 years. I've testified at OSHA hearings, I've testified at Right to Know hearings, I've testified at different hearings on different bills, and I could take the testimony of industry from all those hearings and it sounds like a broken record. It's the same thing over and over again.

We were told in 1980 in Philadelphia that Right to Know was going to bankrupt the economy of Philadelphia. We were told that the vinyl chloride standard was going to ruin the vinyl chloride industry. We were told that Right to Know generally was going to destroy the economy. So was OSHA, so was the Clean Air Act, so was the asbestos standard. Not only were we told that they were going to destroy the economy, but

we were also told that we didn't need them because we had these other provisions and other law.

Personally I'm tired of listening to all that. I think that your bill probably takes, as I said earlier, the first real -- in common sense to get the people who are affected by the problem at a very low cost and to get them in the game. These other people who are coming here with this poll parrot stuff about why we shouldn't have it, ought to be very glad that we are only asking for the right to act and not the right to get even.

ASSEMBLYMAN SMITH: That's a great punch line. Thank you for coming here, the both of you.

MR. KANE: Thank you for your time. Do you want copies of this testimony?

ASSEMBLYMAN SMITH: It would be very helpful, yes.

The next two speakers are Louis Cuccinello, from the Hawthorne Citizens for a Clean Environment, and Rick Engler, who is going to pass. Is Mr. Cuccinello here?

L O I S C U C C I N E L L O: It's Miss.

ASSEMBLYMAN SMITH: Miss, I'm sorry. Lois, if you would identify yourself for the record?

MS. CUCCINELLO: Yes, I will. My name is Lois Cuccinello and I am here as a resident of the Borough of Hawthorne in Passaic County to testify on the impact that legislation such as the New Jersey HELP Act could have had on my community as we wrestled with the contamination of our drinking water supply.

In 1979, the State Department of Environmental Protection alerted our municipal government to high levels of volatile organic compounds in Hawthorne's well water. By the mid-'80s, the DEP had cited two chemical companies in Hawthorne as major contributors to the contamination of the aquifer serving our town.

The companies, Calgon, a division of Merck, and Inmont, which was later purchased by BASF, had coexisted uneasily in Hawthorne for many years. Both were major employers, though not exclusively of Hawthorne residents, but both had long fueled rumors about the possible pollution of our community because of their operations. When news broke about the magnitude of the water contamination, many residents reacted with a mixture of anger, fear, and powerlessness.

Information regarding the safety of the water and its effect upon our health was scarce in the early days of the crisis and it was inadequate later on. A "them and us" attitude developed between the residents on one side, and the municipal government and the chemical companies on the other. Allegations flew and uncertainty reigned. Borough leaders were accused of negligence and cover-ups; the companies developed a fortress mentality, although one attempted to prove its innocence by releasing a study done by its hired geologist, and in 1987 the residents, desperate to have the drinking water cleaned up, formed the Hawthorne Citizens for a Clean Environment, of which I am a member.

Since HELP was, literally, not available to us, our citizens' group was ultimately left with litigation as our only means of redress. It was a decision extensively debated, as no one wanted to deal with the time or the cost involved in litigation. But with few if any legal options available, the group filed a class action lawsuit in an effort to address issues which the DEP either had no jurisdiction over or could not enforce. Although I am a plaintiff in that lawsuit, I personally anguished over the effect that the lawsuit might have on the one company still remaining in town.

Since the decision to litigate, the DEP has overseen the cleanup of our water, and both companies have ceased operations in Hawthorne, with the loss of hundreds of jobs. In

announcing its shutdown, Calgon representatives specifically mentioned that the environmental problems it faced in Hawthorne had played a significant role in that decision.

I believe the chain of events outlined above could have been altered if HELP had been available. One provision of the HELP Act in particular, the Qualified Community Organizations, may have allowed for better channels of communication between the parties. Much of the animosity that developed between the residents and the companies was due to the lack of knowledge and understanding about the operations. By the time the citizens' group was formed, the situation had deteriorated to such an extent, there was no longer any chance for a rational discussion about striking a balance between tax ratables and jobs, and concern with the environment.

The Qualified Community Organization provision would have, before the crisis deepened, allowed concerned citizens access to the facility, access to qualified experts, and most importantly, access to information that could have answered our questions and quelled our fears. A lawsuit, which is still pending in the Hawthorne situation, may have been unnecessary.

I heard one of the representatives of industry this evening talk about the fact that industry was fleeing New Jersey because of overregulation. I would submit to you that with or without legislation, the citizens of New Jersey are not going to sit still and allow their water, their air, and their land to be contaminated. If we don't get legislation such as HELP through the State Legislature, we are going to take it to the courts. And if we want to overburden that system with lawsuits such as we have in Hawthorne, then that's a decision that is going to have to be made in each individual situation.

I'm here to ask on behalf of my family and my neighbors in Hawthorne for legislation such as HELP, so that the next time, people in a similar situation do not have to go through the judiciary. Thank you.

ASSEMBLYMAN SMITH: Thank you, Ms. Cuccinello.

Is there anyone present in the audience who is an opponent of the legislation and wishes to testify? (no response) Okay, then I am just going to go down the list as I have it of additional proponents.

I'm not sure if this is a panel of people or of individuals: Amy Baruth, CWA Local No. 1031 -- it's a panel -- Bob Middlesworth, Hotel and Restaurant Workers, Local No. 54, Ray Peterson, American Federation of Teachers, Rob Broderick of New Jersey Education Association. Is that the end of the panel? There's five more names: Robin Mama, Neal-- What's that?

N E A L G O R F I N K L E: Yeah, I'm on the panel, Neal Gorfinkle.

ASSEMBLYMAN SMITH: Okay. Robin Mama of Philadelphia Area Project on Occupational Safety and Health, Neal Gorfinkle, White Lung Association, Richard Moricy, North Bergen Asbestos Hazard Oversite Committee, Caron Chess, Environmental Communications Research Program, Rutgers, and Don Clark, Network for Environmental and Economic Responsibility. Is there anybody still in the audience? (laughter)

All right, I would assume that as a panel you have decided in what order you are going to speak, so somebody take the black microphone and get started.

A M Y B A R U T H: Ad Hoc committee, here.

ASSEMBLYMAN SMITH: Okay.

MS. BARUTH: My name is Amy Baruth and I am a staff representative and health and safety coordinator for the Communication Workers of America, Local No. 1031. Local No. 1031 represents 2200 State workers at the Department of Higher Education and the nine state colleges. Today I am representing CWA District One, Public Sector, which in New Jersey represents 40,000 State workers as well as thousands of county and municipal workers. However, the main examples I will cite are Local 1031 specific.

I would like to thank you for this opportunity to present this testimony in support of the Hazard Elimination Through Local Participation Act. The passage of HELP will benefit all sectors of New Jersey society including public workers and the citizens whom we service.

The main point that I would like to stress here today is that public workers do face health and safety hazards in their work environments. From asbestos in their buildings to fumes from print shops and chemistry, biology or art labs, health and safety is a real issue, and workers as well as the public need the right to meet and discuss their concerns with management.

Several examples of where this process of joint health and safety labor/management committees have worked are as follows. At three of the colleges that Local 1031 represents, the union met with the administration of the colleges and was effectively able to have toxic solvents used in the print shops such as methylene chloride, which is a suspect carcinogen, replaced with less toxic solvents. In addition, through joint efforts, two of those colleges agreed to replace the inadequate ventilation systems in these print shops for upgraded, properly designed systems to minimize exposure to potentially hazardous solvent vapors to both the workers in those areas as well as to the students and other members of the college community who frequent the print shop area.

It was through the awareness generated out of the Community and Worker Right to Know Act that the workers in these print shops became concerned about the solvents that they worked with, and came to the union for assistance. It was the joint meetings between the CWA and the administration that corrected the health and safety problems in these instances and gave the workers the power to act upon the information that they had gained through the Right to Know Act.

The problems with these scenarios is that none of these committees remained intact as working joint health and safety committees. These committees were one-shot committees to deal with the problem at hand, so regular meetings don't occur and problems aren't corrected as readily as they could be.

The one example where a joint health and safety committee has remained intact is a working model for preventative measures concerning health and safety. This committee was formed over the asbestos crisis on campus. The group meets every other month unless an urgent issue is raised. Workers attend these meetings on paid time and all the unions on campus participate jointly with management. The committee is able to do inspections when a complaint is brought to their attention, also on paid time.

The administration has come to respect and benefit from the concerns, opinions, and suggestions raised by the worker representatives, as they understand it is the workers who know their jobs best.

Their input has been extremely beneficial to the operation of the college and to the safety and health of the entire college community, including the students.

These are a few examples of the benefits of labor and management working together to solve health and safety problems on-site. However, there are a variety of health and safety problems that don't get corrected or even investigated, for a variety of reasons.

For example, chemistry and biology labs frequently use solvents and a host of chemicals in experiments for classes. In addition, the art department and photography labs also work with potentially hazardous chemicals. The vapors released by these substances affect not only the students, faculty, and department laboratory assistants, but also the entire building's inhabitants due to ventilation systems that recirculate contaminated air.

Working joint labor and management committees which would be trained under the HELP Act in recognizing potential health and safety problems particular to their work sites would be able to correct problems before an accident or illness develops.

In conclusion, I would like to reemphasize that public workers do face hazards on the job, and those hazards extend to the public that they serve. The HELP bill is an important step in preventing health and safety problems from occurring by educating both workers, management, and the community and giving them the right to act on that knowledge.

B O B M I D D L E S W O R T H: Good evening. My name is Bob Middlesworth, I'm a business representative of Local No. 54, the union that represents the hotel employees and restaurant employees in the casino industry.

Our industry isn't classically lumped in with the petrochemical giants. The more I got involved as our representative in this coalition, the more I realized that we probably need this bill more than maybe people who are more used to dealing with those toxic chemicals.

In my own personal representation of grievance, I've dealt with cocktail servers who have symptoms -- eye problems and nasal problems because of iodine spewing dish machines and service bars, sneaker eating chemicals because of the harshness of the chemicals used by kitchen utility workers in cleaning floors. Respiratory problems from people -- maids -- using cleaning fluids after never having been properly trained. I think that's a result of us being relatively new. Our union has grown from about 5000 members, pregambling, to now about 18,000 members. We are very new to dealing with these kinds of problems.

In going back to our local representation and talking to them, one of the criticisms I was given about this bill was, this is a collective bargaining bill. This is a bill that is

getting you guys what you couldn't get at the bargaining table. My first instinct was, well, so what? It's not the Hazard Elimination Through Labor Participation bill; it's Local Participation. These people need the relief, and they need it now. These problems are not ones that should wait around until the next collective bargaining session.

I just think that you ought to know that the 18,000 air breathing, water drinking, members of Local 54 would like to see you get behind the legislation. Thank you.

ASSEMBLYMAN SMITH: Thank you.

R A Y M O N D A. P E T E R S O N: Good evening, Mr. Chairman, and members of this joint Committee. Thank you for this opportunity to express the views of the New Jersey State Federation of Teachers on this important legislation. I'm Raymond A. Peterson, the State Federation's Director for Educational Issues and Government Relations.

We support this bill and commend its sponsors for drafting legislation which, if enacted, can improve health and safety in each community and in each workplace without creating a layer of bureaucracy. We see only one flaw in the legislation; that is, the exclusion of the public school districts from its coverage and protection.

Granted, public schools are relatively safe places to work, but they are not entirely without hazards. It seems like only yesterday that I, as a local union president, was prevailing on our school superintendent to do something about the asbestos covered ceilings in our high school and several other schools.

Recently, I read of a teachers' union in Old Bridge calling public attention to a ventilating system that was found to be the cause of many respiratory illnesses among the faculty and the children in that particular school district.

Not long ago, I read in the local newspaper about a shop teacher in Piscataway who refused to use certain equipment because of an inadequate exhaust fan arrangement in his shop.

Two years ago the Union County Regional High School District had some health problems that were traced to chemicals stored beneath the nurse's suite of offices by the school's maintenance people.

Just last week I received this newspaper, Newark Teachers' Union Bulletin, and it was published just this month. On page three-- I'll give this to you Mr. Chairman, I have photocopies of the story. On page three, there is a story about gas cylinders, dozens of them, being stored in the administration building where hundreds and scores of people work. They rent space in a large building. As I understand it, there are 500 people working in that building. The instructions on the gas cylinders say, do not store them indoors, store them vertically, not horizontally. As you look at the picture, both of these prohibitions were violated.

So, there are problems and dangers in the public schools, and we hope we can provide a mechanism for correcting these fears that the employees have. And not just the employees, of course. Every community in the State and in the country puts its most precious assets in those buildings for a least 180 days out of the year.

Thank you for your attention.

ASSEMBLYMAN SMITH: Thank you. If we have an accident while anyone is testifying I am in serious trouble. (referring to the microphone being passed from one speaker to the other)

R O B E R T B R O D E R I C K: This is called tag team testifying... I'm Rob Broderick, a lobbyist for NJEA, and I just wanted to second most of what Ray Peterson just said. Amy, when she spoke, mentioned that this bill will cover public employees, but of course, it will not if passed as it is now, cover public school employees. We would urge that you reverse that and cover public schools.

Ray mentioned administrative offices in Newark and he also mentioned several schools. I could cite many examples of school facilities having readily identifiable hazards as well.

The bill covers local and interurban transit facilities and also covers municipal garages, but as it now stands school garages, which are often the resting places for dozens of school vehicles, wouldn't be covered.

The covered industry definition also includes paints, varnishes, and supplies, and Ray gave the example of how one school, indeed, had dealt with -- and I can give several examples of schools who have large quantities of these materials on hand, especially our older school districts which need frequent repainting and maintenance.

Chemical products are in college labs, as Amy mentioned, but they are just as likely to be found in high school laboratories. Many high schools in the State also have photography courses with the kinds of chemicals that are used there.

Neal Gorfinkle will probably talk about asbestos, but we have many school districts in the State with asbestos problems. We're still determining how much, in some of those districts, asbestos exists. And we're still determining how to deal with it. Some school buildings have radon and other gas problems. We're still learning how to deal with that.

Many schools have chemicals in storage for use in duplicating equipment and other office equipment and machinery, and accidents can happen with those sorts of chemicals.

We urge that school boards be included -- that school districts be included in this legislation.

We have another suggestion, that the public membership of the Emergency Planning Committees be increased to include representatives of school districts. If these committees are charged with making up evacuation plans in the case of large scale release of some toxic into the atmosphere, schools should

certainly be included on those committees. A representative of the school administration, and we also feel a representative of the employees of the district, should be included on that committee.

Thank you, Mr. Chairman.

ASSEMBLYMAN SMITH: Thank you.

MR. GORFINKLE: Honorable members of the Committee, good evening. My name is Neal Gorfinkle and I am the Asbestos Victims' Program Coordinator for the New Jersey White Lung Association. We are an asbestos victims' organization which in our membership and through our programs represent many thousands of asbestos victims and their families throughout New Jersey and in neighboring states. I'm here strongly in support of the HELP legislation.

I'm joined here by Mr. Richard Moricy of the North Bergen Asbestos Hazard Oversight Committee, and I'm going to be submitting testimony in writing from Ms. Deidre Bucciarelli, who is from the Princeton Asbestos Hazard Oversight Committee.

The asbestos victims speakers have already testified eloquently to the preventable tragedies which they and their families have suffered, and how the HELP legislation will make it possible to avoid such tragedies in the future. What we would like to address ourselves to at this point is the question of the scope of the legislation.

Much of the work of the White Lung Association in recent years has focused on the problem of asbestos in the schools. While legislation has been passed at the Federal level requiring school districts to respond to this proven health hazard, one gaping loophole in this Asbestos Hazard Emergency Response Act legislation is a lack of a mandate for the participation of school employees, parents, and the community in designating and carrying out these response actions.

I would like to introduce Mr. Richard Moricy from the North Bergen Asbestos Oversight Committee, to describe some of the difficulties which they have encountered having been given the equivalent of the Right to Know under AHERA, but lacking the right to act.

We hope that this testimony will underline the importance of passing this legislation and extending the scope of the legislation to cover buildings that are owned and maintained by school districts throughout the State.

R I C H A R D M O R I C Y: Good evening, Mr. Chairman. My name is Richard Moricy. I'm Co-Chairperson of the North Bergen Asbestos Oversight Committee and also a concerned parent. I would like to state that I support the passage of the HELP legislation, and that I would like to see the scope of the bill extended to all New Jersey boards of education.

Our committee was formed out of a crisis situation when the North Bergen Board of Education improperly removed asbestos from the Horace Mann Grammar School in December, 1988. The health and safety of students, teachers, and school workers was jeopardized because of ignorance by the board. The purpose of the committee was to protect the health and safety of all students and school personnel, and to improve and restore trust and confidence in the school board.

From the beginning, the school board didn't take the Oversight Committee seriously. The degree of power that the committee had was always in question. The committee was not allowed to participate in the evaluation of contractors. It had no input into alternative insulators once the asbestos was removed. It could not conduct independent air sampling tests to verify that work was properly performed.

Original management plans lacked detail and were inaccurate. The committee requested prompt action in revising these documents but were constantly stifled, making evaluations of the management's plans difficult.

The committee was unable to get the board to communicate with the committee over all issues regarding asbestos and asbestos abatement projects leading many members to discontinue their attendance and participation at the meetings.

Committees such as ours need enactment of this proposed legislation. The safety of our children, teachers, and workers in the schools must be guaranteed.

I once again, support the HELP legislation and request that it be extended to all New Jersey school boards. Thank you.

ASSEMBLYMAN SMITH: Thank you.

Thank you, panel. We appreciate it. On my list I have triple question mark, PBA, CWA No. 1034. Are there any representatives from either of those organizations who wish to speak? (no response)

R O B I N M A M A: My name is Robin Mama, and I'm the Associate Director of PHILAPOSH, the Philadelphia Area Project on Occupational Safety and Health.

I've submitted our testimony as well as testimony from the Chemical and Industrial Union, Local No. 12, which is part of the International Brotherhood of DuPont Workers at the DuPont Repauno plant. They are also one of our sponsoring locals.

I would like to thank you for the opportunity to testify today. PHILAPOSH is a coalition of 164 unions in the Delaware Valley area, working for safe and healthy jobs. We have 41 sponsoring unions in New Jersey, representing 68,700 workers, most of whom are in the southern part of the State.

PHILAPOSH played a key role in getting the New Jersey Right to Know Law passed, and has committed its support to the campaign to pass the Hazard Elimination Through Local Participation bill.

We strongly believe that the HELP legislation is needed now. Any reasonable system of regulation cannot rely on the government alone to be effective. The career of OSHA shows

this with great clarity. The responsibility for regulation and enforcement must be shared with workers and the community. Industry's cooperation is not ruled out, but a power asymmetry has allowed industry to see its responsibilities for health and safety as secondary to other goals, namely profit making.

Workplace exposures have direct environmental consequences, since chemicals and other hazardous substances that are used in the workplace all too often get dumped into the water, air, and soil. Workers are exposed to these hazards at work and then exposed again in their communities.

Right to Know has provided workers and community residents with valuable chemical information. Information means that workers and community residents can know the real hazards they face and can begin to work to protect their health and safety. Information in the absence of guaranteed rights to act on it means little or nothing. The right to know must be accompanied by the right to act to improve working conditions, reduce environmental hazards, and change conditions to prevent injury, illness, and death from occupational and environmental contamination. The proposed HELP legislation provides workers and community residents with this ability to act, which will ultimately benefit all workers and residents in the State of New Jersey. Thank you.

ASSEMBLYMAN SMITH: Thank you. Is there any other member of the public who would like to-- Marie Curtis, come forward. I almost said the League of Women Voters, there.

M A R I E A. C U R T I S: Oh. Shame on you. No. I'm representing the New Jersey Environmental Lobby. We're here in support, and I am not going to read the testimony.

ASSEMBLYMAN SMITH: We're going to put it into--

MS. CURTIS: It's in writing and you may read it at your convenience.

ASSEMBLYMAN SMITH: May God bless you. (laughter)

New Jersey State Library

Is there anyone else who wants to-- Please come forward.

J O S E P H J. F A Z I O, J R.: Good evening. My name is Joe Fazio. I am Secretary/Treasurer of Local No. 1060 of the Communications Workers of America, and I am employed by AT&T Bell Laboratories. I've come here today in support of the HELP bill.

I would like to think that our local union is responsible for the increased cooperation between the union and the company on health and safety issues recently, but I cannot wonder if the introduction of this bill is the real reason.

There were times in the past when we were told to mind our own business when questioning situations we felt possibly harmful to our members and the community. In one instance, after diligently pursuing the matter, our suspicions were found to be correct. This was a case of asbestos in a work area. We were told it was not asbestos, but cement dust coming from the lower level. A day or two later, the area was sealed off when asbestos was found to be coming from the walls above.

Although I am apprehensive about the degree of disciplinary action which can be imposed on a worker who is the hazard prevention advocate, I could live with that if the advocate's rights under the bill are not weakened. I believe this bill as it is currently worded is truly a compromise. It should lead to better communication between the company, the community, and workers.

An ounce of prevention is worth a pound of cure, and by keeping our towns and workplaces safe it will result in a savings to the companies. Workers and residents will be healthier and jobs will be saved by correcting a problem before it gets out of hand.

Thank you.

ASSEMBLYMAN SMITH: Thank you. Is there anyone else wishing to speak? Yes, sir.

E D W A R D P U R T I L L: It is somewhat appropriate. I was the first one here today, with the exception of the advance team, however, all right. My name is Ed Purtill. I'm the Executive Secretary of the Bergen County Central Trades and Labor Council. My message is on behalf of the Labor Council of Bergen County.

The Council is made up of 51 AFL-CIO affiliates. We represent the-- The various affiliates represent close to 60,000 members in Bergen County.

On February 14, the council, at their regular monthly meeting, discussed at some length the HELP legislation. It was unanimously passed by the Council to support this legislation as needed legislation.

Just a personal note: I was an employee for 25 years in a chemical plant, and in addition to that I served 10 years as a staff representative of the International Chemical Workers Union which serviced workers in the chemical industry. I know firsthand from many personal experiences that this type of legislation is definitely needed. It's important and we will all benefit by it.

Thank you very much.

ASSEMBLYMAN SMITH: Thank you. Is there any other person wishing to speak? (no response) Any other person wishing to speak? (no response)

All right. The public hearing on this bill is closed. The public record on the bill will be held open for 30 days. If you would like anything included in the public record please send it to our Committees and we will be happy to insert it into the record.

Also, I think we should acknowledge the presence of two heros in our audience today. The two heros are Harry White, and Diane Wiacek, who are the two people who sat without a break, without any break whatsoever, and listened to it. That was heroic.

Everyone have a good evening and thank you for coming out.

(HEARING CONCLUDED)

APPENDIX

NJ RIGHT TO KNOW AND ACT COALITION
(in formation)

Allied Citizens Opposing Pollution! * Aluminum, Brick & Glass Workers 514 * Amalgamated Clothing and Textile Workers Union 1298, and Central & So. Jersey Joint Board * American Ass'n of University Professors- Faculty Ass'n of Monmouth College & Rutgers Council of AAUP Chapters * American Fed. of State, County & Municipal Employees, Councils 1, 52, 71 & 73 and Locals 1761, 1911 * Bergen County Central Trades & Labor Council, AFL-CIO * Boilermakers 777 * Borg's Woods Preservation Coalition * Burlington County Central Labor Council, AFL-CIO * Camden-Gloucester Central Labor Union, AFL-CIO * CATA * Center for Environmental Health Strategies * Central Jersey Environmental Task Force * Chemical Workers Ass'n-Int'l Brotherhood of Dupont Workers * Citizens Commission on Bhopal * Coalition Against Toxics * Committee of Interns & Residents * Communications Workers of America, District 1 & Locals 1000, 1001, 1002, 1006, 1007,1009, 1021, 1031, 1032, 1033, 1034, 1037, 1038 ,1039, 1040, 1058, 1060, 1065, 1066, 1080, 1081, 1082, 1085, 1087, 1088 * Cornucopia Network of NJ * Council of NJ State College Locals, AFT * Cumberland-Salem Central Labor Union, AFL-CIO * Delaware Valley Clean Air Council * Delaware Valley Toxics Coalition * Environmental Research Foundation * Essex-West Hudson Labor Council, AFL-CIO * Food & Water * Grass Roots Environmental Organization * Gray Panthers of So. Jersey * Hotel Employees Restaurant Employees 54 * Hometowns Against Shutdowns * Independent Laboratory Employees' Union * Int'l Ass'n of Machinists 329, 677, 1455, 1812 * Int'l Brotherhood of Electrical Workers 327, 827 * Int'l Chemical Workers Union, Region 3, Locals 155, 527 * IFPTE 195 * Int'l Ladies' Garment Workers' Union, AFL-CIO * Bergen/Hudson, Essex/Central, Phila/So. Jersey District Councils * Int'l Union of Electronics Workers 134, 401, 417, 440, Furniture Workers Division-76B * Ironbound Committee Against Toxic Wastes * Jersey City State Fed. of College Teachers, AFT 1839 * JNESO * Lawyers Encouraging Government and Law * Mercer County Central Labor Council, AFL-CIO * Mobilab Union, Inc. * Monmouth County Friends of Clearwater * National Ass'n of Retired Federal Employees- Cherry Hill * National Toxics Campaign * NJ Citizen Action * NJ Coalition of Labor Union Women * NJ Education Association * NJ Environmental Federation * NJ Environmental Lobby * NJ Industrial Union Council * NJ Rainbow Coalition * NJ State Federation of Teachers, AFT * NJ State Police Benevolent Ass'n * The Newspaper Guild 10 * Occupational Health Div., Robert Wood Johnson Med. School * Ocean County Citizens for Clean Water * Office & Professional Employees Int'l Union 32 * Oil, Chemical and Atomic Workers, District 8 Council & Locals 8-149, 8-5570 * Passaic County Labor Council, AFL-CIO * People United for a Klean Environment * Philadelphia Area Project on Occupational Safety & Health * Residents for Environmental Preservation and Protection * Retail, Wholesale & Dept Store Union 108,1034 * United Auto Workers, Region 9 * United Electrical, Radio & Machine Workers District 1 * United Steelworkers of America, District 9 & Local 2026 * United Textile Workers of America 276 * Utility Co-Workers' Ass'n * Save-the-Hawk * Service Employees Int'l Union 455 * Stop the RocAjet Incinerator Project * White Lung Association * Winslow Township Environmental Commission

During the holidays just passed, I spent some time thinking about my remarks today. Jay Hair had invited me to talk about sustainable development. Sustainable development, as my musician son would say, has a nice ring to it, a nice lyric. But setting it to music proved more difficult than I thought it would be — even in the holiday glow. But now I think I've got it.

Quite often, when I have trouble defining a concept, I find it useful to describe what it isn't — then sometimes what's left is what it is. What sustainable development *isn't* is development in the style of the '50s and '60s as practiced by the industrialized world — corporations, governments and consumers alike. Make it, use it and throw it away; the faster the better. In fact, the measure of success was often how fast you could do all three.

On the other hand, it isn't minimalism either. Minimalism is that concept gathering speed, particularly in Western Europe, that says, "Now that we have what we need in food and material goods, we can revert to the methods we used when we couldn't produce enough food and material goods." I'm having a little trouble with that logic but others don't seem to. And sustainable development isn't an oxymoron like defense build-down, conspicuously absent, or benign neglect.

And sustainable development isn't what the less-developed countries are saying — "Now that you developed countries

The Monsanto Pledge

It is our pledge to:

- ▶ reduce all toxic and hazardous releases and emissions, working toward an ultimate goal of zero effect;
- ▶ ensure no Monsanto operation poses any undue risk to our employees and our communities;
- ▶ work to achieve sustainable agriculture through new technology and practices;
- ▶ ensure groundwater safety;
- ▶ keep our plants open to our communities and involve the community in plant operations;
- ▶ manage all corporate real estate, including plant sites, to benefit nature; and
- ▶ search worldwide for technology to reduce and eliminate waste from our operations, with the top priority being not making it in the first place.

Richard Mahoney, CEO, Monsanto Co.
Jan. 30, 1990
"a Corporation's Commitment to the Environment"

2X

6. Open the plant doors.

An open-door policy is one of the best ways to reassure people that a plant is operating safely because it affords the opportunity to show them how it is safe, according to plant managers. Virtually all of the plants that were visited have held open houses and are willing to host visitors. Exxon's Fulton, for example, said more than 1,000 people—more than half of them students—tour the Baytown facility each year.

"We have a standing invitation to the community to come," added Du Pont's Knowles, who manages the company's Belle facility. According to Knowles, one of the most unusual visits was by a group of Girl Scouts who came to the plant—at 4 a.m. —as part of an overnight activity. Knowles added that when he and others on his staff give presentations, they tell people that if they'd like to see the plant, simply call. Anyone who asks will get a tour, according to Knowles.

Nearby, Union Carbide's Link is another advocate of open houses. One open house in 1987 saw some 1,500 go through the plant and a total of 12,000 to 15,000 come to the nearby park over two weekends.

"It's surprising," said Mike McCready, operational safety manager at the Union Carbide facility, "but you think that people already know about the facility. It's surprising that people who have lived here for a long time don't know very much about the plant." The open house was one step toward educating citizens about the plant. McCaleb, whose ARCO Chemical Co. facility held a "good neighbor day" last June, complete with a plant tour, said open houses are very important and that the facility opens it doors to anyone who wants to come in.

"The point we want to get across out there is that we don't have anything to hide in this plant. We're proud of what we're doing. We make useful products," said McCaleb.

When the Channelview facility held its good neighbor day, the people who operate the plant gave the tours. Every visitor was met in the parking lot by an ARCO Chemical Co. employee and escorted through the plant. And that was by design, according to McCaleb.

"It's really important that you get the people who are actually operating your plant involved in these things because they have more credibility sometimes than the management people," said McCaleb. "I think it gives the visitors some sense that we're not trying to sell them a bill of goods—that here are the people who are actually making the chemicals. And if visitors feel that this is a good, safe place to work, then they get some measure of security in living around the area."

CMA - June 1989

Title III: One year Later

Nalco's Orr agrees that open houses are useful. During an open house held in 1987, some 600 people toured his facility. According to Orr, the event generated favorable media coverage as well as community good will.

"I continue to receive comments from people who say, 'Hey, I did come to your open house and really enjoyed it. I was always kind of scared about what you guys did back there, but now that I've been in your facility and I see the attitude of your people, I'm not nearly as apprehensive as I was,'" related Orr. "I would certainly encourage anyone who is in a neighborhood situation to invite the public, invite the neighbors in for an open house."

See p 3

SPECIAL REPORT:

Industry adopts Responsible Care management program

CMA has adopted a significant new initiative called RESPONSIBLE CARE: A Public Commitment, which is designed to help the chemical industry improve its performance in the management of chemicals.

In a special meeting October 30 at CMA's Chemical Industry Conference in New Orleans, the Executive Contacts of CMA's member companies approved an Association bylaw change making participation in Responsible Care an obligation of membership. In September, CMA's board of directors had unanimously approved the initiative.

"Membership commitment is vital to the success of the initiative."

With this strong mandate from the board and the membership, the Association will begin implementing Responsible Care. Membership commitment is vital to the success of the initiative.

In essence, Responsible Care is a mutual assistance program to help the industry improve its performance in health, safety and environmental quality.

"There is a clear consensus that to achieve the results desired under Responsible Care, we must have the individual commitment of our membership," Paul F. Oreffice, chairman of the board of The Dow Chemical Co. and chairman of CMA's public perception committee, told board members in September.

Oreffice based his remark on comments by members during executive briefing meetings held in July and on letters supporting the effort.

"Why is it important that we act now?" asked Oreffice. "Let me quote former CMA board chairman Hal Sorgenti:

"'In an increasingly competitive labor market, we will attract the brightest and best workforce only if they feel we are a thriving, growing environmentally responsible industry.

'Two, our customers need our assurance that our products and processes don't cause unnecessary health and liability risks.

'Third, the public is demanding increasingly restrictive legislation and regulations because it feels we haven't gotten the message on health, safety and environmental quality.'"

In relating member comments to the board, Oreffice also said: "The time has come to take action as an industry association and as individual member companies. And that action must first begin with a commitment to improve performance."

"Responsible Care is that commitment. In an atmosphere of intense public scrutiny, it is an approach that recognizes that the only way for the chemical industry to survive and prosper is to perform in a manner that *is responsive*, and *is seen as being responsive*, to public concerns.

"Responsible Care is not a public relations program, but if words precede performance improvement, it will be judged as one. The effort is not a 'CMA project' or something that can be accomplished by CMA. It can be brought about only by improving individual and collective company performance."

Responsible Care will be implemented using methods developed for the Community Awareness and Emergency Response (CAER) program. Among them:

- Identify the elements of good management practices in the health, safety and environmental arenas;
- Develop a program—seminars, publications, videotapes and other materials—to broadcast those practices throughout the membership;
- Establish milestones for reporting on progress to identify where companies need help in improving their performance and to measure the collective improvement of the industry;



Mr. Oreffice

"We want to implement Responsible Care with such a standard of excellence that we will attract new members."

- Inform policy makers of the industry's approach, factor their feedback into industry programs and keep them advised of progress and performance; and
- Give the public—in a targeted way—a report card on industry activities and success.

4X

Six elements of Responsible Care outlined

Responsible Care, developed by a CMA board committee, has the following elements:

Guiding Principles for Responsible Care of Chemicals. Each member company will sign this statement of commitment to fully support a continuous effort to improve the industry's responsible management of chemicals.

Signing the statement is a pledge to operate according to the principles, which are based on CMA's 1983 policy statement on health, safety and the environment, and on the principles of the Canadian Chemical Producers' Association's Responsible Care program, on which CMA's initiative is modeled. The principles also incorporate guidance received from member company executive contacts.

Codes of Management Practices. Various CMA committees will be assigned to develop designated management codes. Each set of practice codes will focus on a different concern: distribution/transportation, for example.

Practice codes will be developed if the industry believes there is a need for voluntary action or if there is a substantial public concern to which the industry should be responsive, or both. Initially, code packages will be considered for:

- the CAER program
- release reduction and management
- distribution/transportation and
- plant operations

Based on the implicit obligations of the guiding principles, the codes will identify the elements of good management practices as objectives, rather than absolute or quantitative standards. Each code will be approved by the board after all member companies have had an opportunity to comment.

Public advisory panel. An experienced facilitator working at CMA's direction will assemble and moderate a public advisory panel of community, environmental, health and safety thought leaders that will help the industry identify and develop programs and actions that are responsive to public concerns and viewed as proactive by key policy groups.

Meeting several times a year, the panel will provide input on issues that panel members believe require industry response. The panel will also critique proposed practice codes.

Community advisory panels at the local or regional level can serve companies and the industry in a similar manner. They will be recommended as part of a CAER practice code. CMA will offer guidance to companies in forming and operating these local panels.

Member company self-evaluations of management practices. Evaluating performance and measuring improvement will help meet three objectives.

First, to demonstrate a record of performance improvement, some practice codes will call for CMA to develop statistical trends from data that members already report to the government.

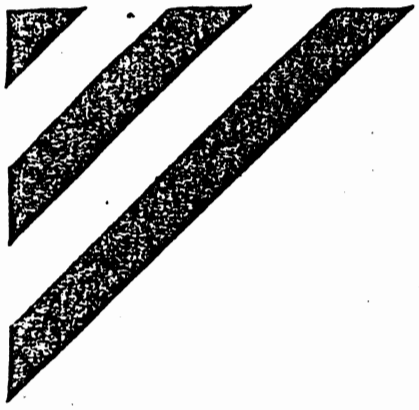
Second, self evaluations will provide feedback from the membership on the value and relevance of the practice codes and on any additional CMA support activities that may be needed.

Third, such evaluations, along with quantitative trend data, will build industry credibility with government and other members of the public.

Each management practice code will define management practice "progress mileposts" that member companies will use to measure and evaluate their performance. Details of evaluation programs will be developed by designated work groups for the board of directors' consideration and approval.



The article on the reverse, "COMMUNITY INSPECTION LEADS TO GOOD NEIGHBOR AGREEMENT WITH DYNASIL CORPORATION OF AMERICA" by Jane Nogaki, is reprinted from the publication below and is described in its foreword at right.



COMMUNICATING TITLE III

A newsletter on outreach activities

- ☐ **Five Risk Communication Case Studies**
- ☐ **Newspaper Articles on Chemical Releases**
- ☐ **Generating Positive Media Coverage**
- ☐ **Rewards of Open Communication**

CHEMICAL MANUFACTURERS ASSOCIATION

Volume 1, Number 8
February 1989

FOREWORD

The lead item in this month's issue is a paper on effective risk communication prepared for CMA by Prof. Alonzo Plough of Tufts University. The paper includes case studies of how several communities and industries responded to the challenge of communicating about environmental hazards, the lessons learned in each case, and suggestions for strengthening risk communication activities.

Following an interview of the plant manager of Air Products and Chemicals, Inc.'s Escambia, Fla. facility, three positive articles on chemical releases from the Air Products plant (and other area chemical facilities) appeared in the Pensacola News Journal. The articles, which exemplify the value of being prepared for media visits, were distributed by Air Products' corporate communications department to plant managers throughout the company. "Communicating Title III" is publishing them so you, too, can see the potential for positive media coverage.

Generating positive media coverage can be difficult if you're not well-versed in media relations. As a reminder of how to be most effective when dealing with reporters, we are reprinting "Press Relations: A 14-Point Plan for Enhancing the Public Image of Health Care Institutions." Although the item appeared in Health Care Management Review (Vol.13, No.4, Fall 1988), all organizations can benefit from adhering to its contents.

The rewards of open communications between a plant manager and neighborhood residents are exemplified in a story about Dynasil Corporation of America in Marlton Lakes, N.J. The story was written by a member of the Coalition Against Toxics and appeared in the Pine Press, a neighborhood newspaper that is sent to about 300 homes near the plant.

* * *

On another note, "Communicating Title III" recently obtained a copy of a newsletter called The Community Plume. Published by the Environmental Policy Institute (Washington, D.C.), The Plume describes itself as "a publication for members of America's local Emergency Planning Committees." If you happen to see a copy of The Plume or if you hear someone mention the publication, please let us know.

As always, we depend upon you to let us know about your Title III communications activities so that we may share your experiences with others around the country. If you would like to inform others of your Title III outreach activities, send material to: Communicating Title III, Chemical Manufacturers Association, 2501 M Street, N.W., Washington, D.C. 20037.

COMMUNITY INSPECTION LEADS TO GOOD NEIGHBOR AGREEMENT WITH DYNASIL CORPORATION OF AMERICA

1989

by Jane Nogaki

What can residents of a community do when they are concerned about air/water /land discharges from local industries? Can residents have a part in negotiating hazard reduction with local industries which may impact on their own neighborhood? Coalition Against Toxics members decided to try a "community inspection" model using Dynasil as the local industry to be inspected, with the hopes that "good neighbor agreements" could be reached with Dynasil, and other industries such as Owens Corning in the future.

The president of Dynasil, Marty Saepoff, had met with Marlton Lakes residents in 1986 about air and water concerns, so there was a history of cooperation between the neighborhood group and Mr. Saepoff. At the 1986 meeting, the 8 neighbors who went on a plant tour learned about the product made at Dynasil, which is an extremely high purity glass, or synthetic fused silica, used to make components for aerospace and laser optics industries. They saw that the glass making process is basically the combining of two ingredients, silicon tetrachloride and oxygen, in super-heated furnaces.

Natural gas is the source of heat for the furnaces, each of which has a stack to emit the products of combustion. The stacks emit steam, hydrochloric acid, and silicon dioxide. The emissions are controlled through a system of wet scrubbers. The scrubbers maintain a 99% reduction in pollutants. Since 1984, no process water has been discharged onto the back sand field. Some non-contact cooling water is discharged into a small catch basin. Acid process water is neutralized with sodium hydroxide rendering a weak saline solution. The saline water is trucked out by tanker to a sewage treatment plant week as needed.

At the conclusion of the 1986 tour, the neighbors were satisfied that Mr. Saepoff was disposing of wastewater responsibly, and that the vegetation die-back on the adjacent property should not get any worse because new air emission controls had been installed. The plant was (and is currently)operating in compliance with DEP regulations. Mr. Saepoff assured the neighbors of his continuing interest in keeping in touch with local concerns.

In May, 1988, CAT organized a second plant tour of Dynasil for the purpose of ascertaining other kinds of hazards beside environmental; for example, if there were a fire at Dynasil, or a leak at one of the storage tanks, what would be the effect on Marlton Lakes residents, and could a plume travel from Dynasil to Marlton Lakes which might require an evacuation?

Does such an evacuation plan exist with the local fire companies? (West Berlin Fire Company and Kettle Run Fire Company assist each other when the need arises.)

Seven people made up the community inspection team: Jane Nogaki and Wynne Falkowski (CAT), Joe Somers (Kettle Run Fire Chief),Ken Brown,(NJ Environmental Federation), Eileen Nic (Citizens Commission on Bhopal), Richard Youngstrom (Industrial Hygenist, Environmental Engineer) and Peter Youngstrom (National Campaign Againt Toxic Hazards). Martin Saepoff of Dynasil indicated he was open to suggestions from the community group and its technical consultants about improvements to safety in his workplace.

During the inspection, Saepoff demonstrated the new wet electrostatic precipitator that was being tried as a further air emissions control for particulate from the stacks. Dynasil has applied for a construction permit from DEP to install this new system. A sprinkler system for fire protection has been installed within the building to decrease the risk of property damage due to fire.

After the inspection, technical consultant Richard Youngstrom developed five recommendations for Dynasil to improve plant safety. The report was delivered to Mr. Saepoff and a meeting set to review the recommendations with him. At that meeting, Dec. 1, 1988, Mr. Saepoff not only agreed to the recommendations, he had already implemented most of them. The recommendations concerned installing an emergency shower, completing diking around the outdoor storage tanks for spill containment, installing a sump pump to pump rain water out of the diked areas (one of the storage tanks contains silicon tetrachloride, which can react with water to form hydrochloric acid), training workers in what to do in case of fire, and developing a hazard communication plan for workers and the local fire company.

Mr. Saepoff agreed to keep an ongoing dialog with the Coalition Against Toxics to deal with future concerns as they arise. If you have questions about Dynasil, contact Jane Nogaki 767-1110, or Mr. Saepoff 767-4600.Jane has a copy of Dynasil' s right-to-know survey if anyone would like to see it. Evesham Township is in the process of developing an emergency plan for the township which will address all possible chemical emergencies including transportation spills/fires. That plan will be communicated to the public at some point. For information on the Emergency Plan contact Fire Chief Ted Louden 983-2210 or Environmental Commission Chairman Wynne Falkowski,596-0757

Pine Press, Marlton Lakes, N.J., Jan. 1989

Supplement to the Testimony of Jane Nogaki, Co-Chair, New Jersey Right to Know and Act Coalition in Support of HELP - the Hazard Elimination through Local Participation Act S.2058/A.2832

February 28, 1990

On October 31, 1988 Paul Oreffice, Chairman of the Dow Chemical Company, gave a speech to the Chemical Manufacturers Association, the nations major chemical industry trade group (the N.J. Chemical Industry Council is a state affiliate) on behalf of the officers and Board of Directors of the CMA.

In this speech, he announced the launching of "Responsible Care...a bold, new chemical industry initiative to improve our performance in health, safety, and environmental quality." As part of this program he said that CMA will form a public advisory panel and "that a number of our member companies believe this element is so important to developing a responsive Responsible Care program that they have strongly suggested that all member companies use a similar approach at their local facilities. That is to form community advisory panels." (Page 16 of speech).

The November 1988 issue of CMA News (page 3) reported on CMA's effort to encourage formation of these panels at the local level as follows:

"Community advisory panels at the local or regional level can serve companies and the industry in a similar manner. They will be recommended as part of a CAER practice code [a related CMA program]. CMA will offer guidance to companies in forming and operating these local panels." [Our emphasis].

Clearly, a major part of industry thinks local community input into health, safety, and environmental issues is a good idea.

However, as the above citations indicate, industry wants to form and operate these panels themselves. Having industry form and operate these groups will neither lead to meaningful improvements to neighborhood health or to industry credibility.

Community Tour/Open House Survey, 1

COMPANY	LOCATION STATE	TOUR	DRILL	OPEN HOUSE	WHO
3M Company	Alabama	yes		yes	buisness and residents
	Illinois	yes		yes	local officials (other groups to come)
? local industrial complex	Delaware	yes			Elected officials, emergency responders, civic groups, hospital officials
Air Products	Pennsylvania			yes	employee families, plant neighbors and elected officials
Air Products and Chemicals Inc.	United Kingdom			yes	500 people
All, Sig., Ciba-Geigy, Diam. Sham., Reichhold, Stauffer, Sunolin, Tex.	Delaware	yes			fire personnel
American Cyanamid	West Virginia	yes			local volunteer fire departments
American Cynamid	New Jersey	yes		yes	250 people: retirees, employees, and their families
			yes		covered by local newspapers and radio station
Amoco	South Carolina	yes		yes	local officials, public service personnel & other chemical Plant managers
Amoco Chemical Company (R)	Alabama	yes		yes	50 local & community leaders: 700 families of workers:? local residents
Ashland Chemical	Ohio	yes			community participants
Chevron	California			yes	visitors & local elementary schools
Chevron Chemical Co.	LA			yes	Reps. Jefferson Parish Voc. School,Jeff. Par. School Board & others
	Texas		yes		elementary school stedents, med. helicopter, & hospital emerg. room
Degussa Corporation	Alabama	yes			neighboring residents
Delaware City CAER Group:20 companies & government organizations	Delaware	yes			elected officials, civic grps.,emergency responders,hospital officials
Diamond Shamrock	?	yes			local emergency responders & environental personennel
Dow	Georgia	yes			39 neighboring residents
	Ohio			yes	600 people
Dow (Allyns Point Plant)	Conneticuit	yes			U.S. Coast Guard Academy enigineering students
Dow Chemical	Canada		8X	yes	the community

Community Tour/Open House Survey, 2

COMPANY	LOCATION STATE	TOUR	DRILL	OPEN HOUSE	WHO
Dow Chemical	Texas		yes		December 1989: involved elementary students
Dow Chemical Company	Ohio	yes		yes	public, media and city and county officials.
Dow Chemical USA	Ohio		yes		Bus load of students,Fire Depts., Police, medical personel, Nat'l Guard
East Los Angeles area facilities	California	yes		yes	Area residents and other facilities' emergency response personnel
East Los Angeles CARE Association				yes	Suggested holding openhouse on National Chemistry Day
Exxon	Texas	yes			residents of five bordering neighborhoods
	Wisconsin	yes			emergency responders
Exxon (Grant Chemical)	Lousiana			yes	80 community leaders
Exxon (Olegins plant)	Texas	yes			Spanish speaking community members
FMC Corporation	New Jersey	yes			Members of the community
FMC Corporation(Agricultural chemical plant)	?	yes			mayor and fire chief
Huntsville Alabama area chemical faacilities	Alabama	yes			one Emergency Management Agency representative
Huntsville Alabama CARE Coordinating Group	Alabama	yes			emergency management tour chemical facility to designate tornado shelters
ICI Americas	Delaware			yes	area civic Associations
	New Jersey			yes	300 people including:Plant managers(of near-by sites)local gov't officials
				yes	(future event. See ICI Americas, Oct. 87 Open-House)
	North Carolina	yes			400 employees and families,emergency responders,Red Cross,local news media
		yes			local residents
	Texas	yes			local residents
ICI Americas, Incorporated	Illinois			yes	employees,local emergency responders
ICI Americas, Monsanto & Celanese	North Carolina	yes			community members & Press
J. T. Baker	New Jersey	yes			Government officials and residents
Louisiana Chemical Association	Louisiana		9X		brought people to plant sights
Monsanto	Iowa			yes	area residents

Community Tour/Open House Survey, 3

COMPANY	LOCATION STATE	TOUR	DRILL	OPEN HOUSE	WHO
Monsanto	Masssachusetts			yes	51 firefighters
	MO			yes	disaster response pesonnel
Monsanto (Delaware River Plant)	New Jersey	yes			Rose Mclever: reporter with the courier Post
Nalco Chemical Company (Clearing)	Illinois			yes	300 people
Nalco Chemical Company (Katalco site)	Illinois			yes	400 people
Nepera Incorporated	New York	yes			the Woodbury town board
Pennwalt Company	Texas			yes	community members and employees
Pennwalt Corporation	Oregon	yes			?
Rohm & Hoss	Pennsylvania	yes			high school chemistry teachers from 200+ schools
Shell	New Jersey	yes			local residents, high school and junior high school students
Shepherd Chemical Company	Ohio	yes			fire dept. personnel
Sherex Chemical Company	Illinois			yes	?
Stepan Company	New Jersey			yes	450 people: residents and employee families
Union Carbide	Canada			yes	area residents
	Louisiana			yes	12,000 visitors,local residents
	West Virginia			yes	12,000 visitors/local residents
Uniroyal (Elmira Plant)	Canada	yes		yes	800 visitors
Van Waters & rogers	Florida	yes			Florida legislators (task force)
	Illinois	yes			local fire chief

Resources

Community Awareness & Emergency Response Newsletter
Chemical Manufacturers Association
Februaary 1990

Community Awareness & Emergency Response Newsletter
Chemical Manufacturers Association
March 1989

Community Awareness & Emergency Response Newsletter
Chemical Manufacturers Association
November 1988

Community Awareness & Emergency Response Newsletter
Chemical Manufacturers Association
January 1987

Community Awareness & Emergency Response Newsletter
Chemical Manufacturers Association
March 1987

Community Awareness & Emergency Response Newsletter
Chemical Manufacturers Association
May 1987

Community Awareness & Emergency Response Newsletter
Chemical Manufacturers Association
July 1987

Community Awareness & Emergency Response Newsletter
Chemical Manufacturers Association
October 1987

Community Awareness & Emergency Response Newsletter
Chemical Manufacturers Association
December 1987

Community Awareness & Emergency Response Newsletter
Chemical Manufacturers Association
April 86

Community Awareness & Emergency Response Newsletter
Chemical Manufacturers Association
June 1986

Community Awareness & Emergency Response Newsletter
Chemical Manufacturers Association
July 1986

Community Awareness & Emergency Response Newsletter
Chemical Manufacturers Association
August 1986

Community Awareness & Emergency Response Newsletter
Chemical Manufacturers Association
September 1986

Community Awareness & Emergency Response Newsletter
Chemical Manufacturers Association
October 1986

Commuity Awareness & Emergency Response Newsletter
Chemical Manufacturers Association
December 1986

New Jersey CAER Reports
Chemical Industry Council of New Jersey
September 1988 Vol. 1, No.4

New Jersey CAER Reports
Chemical Industry Council of New Jersey
March 1988 Vol.1, No. 3

12X

TESTIMONY OF DAVID TYKULSKER, ESQ.

February 28, 1990

Before A Joint Hearing of the Senate and Assembly Environmental Protection Committees

13X

Chairperson van Waggoner, Chairperson Smith and Honorable members of the Committees:

My name is David Tykulsker. I am a labor and environmental attorney in Newark and I am testifying in favor of the proposed HELP legislation as counsel to the Right to Know and Act Coalition. Let me briefly sketch some of the highlights of A.2832 and S.2058 to illustrate how these bills advance the environmental protection objectives that Ms. Nogaki and Mr. Scherzer have outlined.

The bill declares it the public policy of this State to encourage citizen involvement to prevent and eliminate hazards. It authorizes two new, non-governmental structures: Qualified Community Organizations of citizens to inspect facilities, and to discuss recommendations with the facility owners and operators. Each covered workplace will have a Hazard Prevention Committee with on-going, on-site responsibilities. Additionally, the bill strengthens the municipal Local Emergency Planning Committees that already exist under the Superfund Reauthorization of 1986. The bill provides the structures for coordination of these activities.

Fundamental to this legislation is the determination that environmental releases and occupational exposures must be addressed in a unified manner. The bill does this through a comprehensive definition of HAZARD. While other speakers will address this important public policy determination, let me raise three fundamental points. First, most substances that are eventually released from industrial facilities into the environment involve initial, and frequently greater, employee exposures. From a prevention point-of-view, a unified approach is called for.

Second, occupational hazards cause families and communities to bear tremendous costs not only in dollar terms of medical treatment, lost productivity etc. but also in the loss of the ability to achieve the self-respect of being able to be productive, and the terrible pity of families seeing loved ones used up, and rendered disabled. Third, facilities that are indifferent to the occupational health of their employees are highly likely to be indifferent to the environmental health of their communities, and vice versa. In seeking to institutionalize prevention, it is imperative that a combined approach be authorized to change such anti-social attitudes.

Turning to the new structures, Community Organizations qualify under this bill by having 50 people resident or working within five miles of the facility sign an authorizing petition. Building on the information contained in our Community and Worker Right to Know Law, N.J.S.A. 34:5A-1 et seq., the facility is obligated to provide necessary information and orientation. Qualified Community Organization inspections are done with advance notice to the facility, and are limited to a maximum of six residents. The Community may bring up to two independent experts along with it on the inspection, and funds are available to assist in the provision of community experts. Inspections are limited to one per quarter, unless the facility has recently had an extraordinary polluting event, in which case there may be one inspection per month. Representatives of the workplace Hazard Prevention Committee and Local Emergency Planning Committee may accompany the community inspection.

Following the inspection, the Community Organization is obliged to send a report of its findings and recommendations to the facility. This report must be discussed by facility management and the community, with a view to drawing up a binding "good neighbor" agreement. Again, both the workplace Hazard Prevention Committee and Local Emergency Planning Committee are encouraged to have input.

The workplace Hazard Prevention Committees are the structures by which facility employees become the front-line of environmental enforcement. The bill provides in the private sector that each "covered facility" with 20 or more employees must have a workplace Hazard Prevention Committee. In the public sector, each State Department must have one Committee per County; each municipality must have a Committee. The size of the Committee increases with the number of employees up to a maximum of 14.

In non-union facilities, employees elect one Hazard Prevention Coordinator, the co-chairperson of the Committee, and the Committee members known as Hazard Prevention Advocates. To avoid possible federal preemption problems, in unionized facilities, the union determines this selection process. Facility management appoints the other Coordinator, and remaining Advocates. Advocates and Coordinators are empowered to inspect the facility, investigate releases into the environment and take other actions designed to uncover hazards. Regular meetings of the Committee must occur at least monthly, and special meetings in the event of an extraordinary polluting event may be called by either Coordinator, The minutes of meetings are posted for facility employees to

review. Employee Advocates and Coordinators must receive hazard prevention training, and DEP is required to provide supplemental training of two Committee members in advanced hazard recognition and abatement. Members of the Committee are granted paid time to perform their duties.

Tie votes among committee members as to procedural matters are resolved by an arbitrator appointed by the governor who is a serving Advocate. It should be made absolutely clear that this bill does not empower an arbitrator, a court or anybody else to require meet existing regulatory standards, or take any substantive action to abate hazards; current statutory, regulatory or contractual mechanisms are left untouched.

The one substantive power in this legislation is the right of an Advocate or Coordinator to require a temporary cessation of an activity that creates an imminent danger of a major hazard. This power may only be exercised if no greater hazard is created by the temporary cessation; the power is conditioned on an initial request to facility management to abate the hazard, and the cessation is limited to only such time as is necessary for the appropriate governmental inspector to be present for the restart of the activity.

I hope this brief sketch of the highlights of this legislation will help you to better understand the bill's structure, as well as to follow the testimony that will be coming up this afternoon. I have enclosed a more detailed four-page summary for members of the Committees, and I will be more than happy to answer any questions you might have.

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Mount Sinai School of Medicine • The Mount Sinai Hospital

Department of Community Medicine
Division of Environmental
and Occupational Medicine
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OCCUPATIONAL DISEASE IN NEW JERSEY: EXECUTIVE SUMMARY

Report from Mt. Sinai School of Medicine to the New Jersey Department of Health

In March 1989, the New Jersey Department of Health requested the Department of Community Medicine of the Mount Sinai School of Medicine of the City University of New York to evaluate the problem of occupational disease in New Jersey. The detailed mandate was:

- to assess the nature, magnitude and costs of occupational disease in New Jersey,
- to describe currently available resources,
- to make recommendations to improve the recognition of occupational diseases and to ameliorate the conditions causing this burden of disease.

Evaluation of these issues was undertaken by a team from Mount Sinai working in collaboration with the Occupational Health Service of the New Jersey State Department of Health and its Surveillance Advisory Board composed of individuals representing schools of health sciences, labor unions, corporate medical departments, federal, state and local agencies, and other interested parties.

Description of the Current Problem

Occupational disease encompasses a tremendously diverse set of illnesses, including lung cancer, chronic kidney disease, reproductive impairment and chronic disease of the musculoskeletal system. At present, there is no complete source of information on the extent of work-related disease in New Jersey. Analysis of the best available data indicates, however, that at a minimum, between 2,170 and 2,870 deaths result each year in New Jersey from occupational diseases. These diseases include occupational cancers, dust diseases of the lung (pneumoconioses), cardiovascular diseases, chronic respiratory diseases, and neurologic disorders. In addition, it is estimated that from 7,317 to 14,776 new cases of occupational disease develop each year in the state as a result of work-related exposures. These estimates are undoubtedly low, since they are based on only a subset of all occupational disease categories and because they derive from data sources that consistently under-report occupationally-related disease and death. Occupational diseases therefore constitute a major public health problem in New Jersey.

Opportunities for work-related exposure are widespread. In 1986, over 10% of New Jersey workers were employed in the fifty most hazardous industries, as ranked by the Industrial Risk Index system. Industrial use of toxic materials is extensive.

Occupational Health and Safety Administration inspection data show that legally permissible levels of exposure for lead, silica, and selected carcinogens are commonly exceeded.

The costs of occupational illness and death are high, especially if the expense of lost productivity, foregone opportunity, diminished investment, pain, suffering and family disruption is added to the direct costs of medical care. The annual costs in New Jersey of five categories of work-related illness: cancer, chronic respiratory disease, pneumoconioses, strokes and coronary heart disease, and fatal kidney disease exceed $280 million. Further, it is important to recognize that these costs are not equitably borne. Ill workers themselves and their families pay a disproportionate share of the costs of work-related disease. Workers' compensation programs are ineffective in compensating costs of occupational illness; only a small percentage of Workers' Compensation awards are for occupational illness. Many of the costs of work-related illness are borne by the taxpayers of New Jersey through Social Security contributions and general tax revenues. A major cause of this inequity is the present failure of the health care system to properly recognize most occupational disease as work-related.

Clinical occupational health services concentrating on the detection and prevention of occupational disease are in short supply in New Jersey. One fully functioning medical school-based center specializing in the diagnosis and treatment of occupational disease exists in the entire state (at Robert Wood Johnson Medical School). A handful of others at various community hospitals have been initiated. Corporate medical departments are restricted almost entirely to larger workplaces and do not concentrate on the diagnosis and treatment of chronic, disabling occupational disorders. For-profit corporate health care providers have not traditionally offered expertise in the diagnosis and treatment of occupational disease.

Certified occupational medicine physicians are sorely lacking in New Jersey. There is only one occupational medicine physician per 110,000 workers practicing in New Jersey, and most of these doctors are not involved in direct patient care. There is currently no masters-level training program in occupational health nursing in the state, and a masters-level program in industrial hygiene has just been initiated.

Occupational diseases are highly preventable. They arise from man-made conditions; therefore, they can be prevented through modification of those same conditions. The fact that occupational diseases are still with us in such numbers is testimony to the profound lack of information on the toxicity of industrial substances, inadequate education of physicians, other health providers and workers, and incomplete surveillance of workplace hazards. The under-supply of trained occupational health professionals and the lack of organized and accessible systems of occupational health care services impede all attempts to reduce the impact of occupational disease.

Recommendations

Careful analysis of the problem of occupational disease in New Jersey led to development of the following specific recommendations:

1. We recommend that the State Departments of Health, Labor and Environmental Protection coordinate and expand existing occupational disease and occupational hazard information systems in order to create a comprehensive, coordinated surveillance system. The object of such a coordinated system is to assess the extent of workplace

hazards and to gain an accurate count of the number of cases of the major occupational diseases that occur each year in New Jersey.

2. We recommend that the State of New Jersey initiate and finance a demonstration project to establish a statewide network of three occupational health clinical centers which would be located in the northern, central, and southern regions of the State in order to be accessible to all New Jersey workers. Such a network should be coordinated through a central office.

3. We recommend that the New Jersey Department of Health foster the development of the new masters level industrial hygiene training program and encourage the creation of a masters-level educational program for occupational health nurses.

4. We recommend that the New Jersey Department of Health and UMDNJ-Robert Wood Johnson Medical School work cooperatively to develop and to implement an educational strategy to improve the relevant knowledge, skills and availability of physicians who practice clinical occupational and environmental medicine.

5. We recommend that the New Jersey Legislature establish a Worker Training and Education Program in Occupational Safety and Health in order to enhance the quantity and quality of occupational health and safety training programs available to the workers and employers on New Jersey.

6. We recommend that the State of New Jersey adopt measures to increase worker participation in assuring safe and healthy workplaces in New Jersey.

The state of New Jersey has taken important steps in the past decade to reduce the burden of occupational disease among its residents. Among these steps have been enactment of a Right-to-Know law in 1983, establishment of a public employees occupational safety and health program in 1985, and expansion of occupational disease surveillance efforts by the State Department of Health. However, glaring gaps in a comprehensive program to prevent and to control occupational disease remain. New Jersey needs to build on its innovative efforts of the past decade in creating workplaces free from risk of preventable occupational diseases.

OCCUPATIONAL DISEASE IN NEW JERSEY

Sentinel facts from the Mount Sinai Study

Goals of Study

The New Jersey Department of Health requested an occupational health research team from Mt. Sinai School of Medicine to evaluate the following aspects of the problem of occupational disease in New Jersey:

1. To assess the nature, magnitude and cost of occupational disease in New Jersey,
2. To describe currently available professional resources,
3. To make recommendations to improve the recognition of occupational disease and to ameliorate the conditions causing this burden of disease.

Principal Findings of Study

1. Best available data allow the estimate that between 2,170 and 2,870 deaths result from occupational diseases each year in New Jersey. These include principally occupational cancers, dust diseases of the lung, cardiovascular diseases, chronic respiratory diseases and neurologic disorders. By contrast, an average of only 58 individuals received Worker's Compensation for death from all occupational diseases and injuries between 1985 and 1987.

2. It is also estimated that between 7,317 and 14,776 new cases of occupational disease develop each year in the state as a result of work-related exposures. These estimates of occupational deaths and diseases may represent underestimates, because physicians tend to under-diagnose occupational diseases.

3. Specific data collected by the New Jersey Department of Health Occupational Health Service indicate that, between 1985 and 1989, an annual average of over 900 workers demonstrate excessive body levels of four heavy metals, including lead, mercury, arsenic and cadmium. In addition, in the mid-1980's, over 1000 people were hospitalized each year in New Jersey for dust diseases of the lungs, all of which are occupationally caused, including asbestosis, silicosis and other scarring conditions of the lungs.

5. The annual costs of occupational diseases in New Jersey exceed 280 million dollars. These costs include medical costs and lost earnings and do not account for the pain, suffering and family disruption produced by occupational diseases. These costs count only selected health conditions, including occupational cancer, chronic respiratory disease, dust disease of the lungs, strokes, coronary hear disease and fatal kidney disease.

6. There is only one occupational medicine physician for 110,000 workers in New Jersey, and most of these physicians are not involved in direct patient care.

7. Excessive exposure to workplace agents is still prevalent in New Jersey. Between 100,000 and 400,000 workers in New Jersey are employed in the 50 most hazardous industries in the state. In almost one half of the workplaces commonly inspected for lead by OSHA in New Jersey between 1980 and 1985, there was lead exposure in excess of the permissible exposure level established by OSHA. For silica, which has been known for centuries to produce scarring disease of the lungs, one-third of the workplaces most frequently evaluated by OSHA in New Jersey between 1980 and 1985 for silica exposure showed excessive levels of airborne silica. Among industries where OSHA most frequently found excessive levels of airborne lead and silica, OSHA succeeded in inspecting less than 10 percent of New Jersey establishments in a 6 year period, between 1980 and 1985.

8. Excessive exposure to toxic agents is also prevalent in the public sector in New Jersey. In targetted inspections of specific workplaces such as indoor firing ranges, building maintenance, brake repair, and others, Public Employees OSHA found violations of legal standards in the vast majority (64 to 91 percent) of workplaces inspected.

Recommendations:

Careful analysis of the problem of occupational disease in New Jersey led to development of the following specific recommendations:

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5. We recommend that the New Jersey Legislature establish a Worker Training and Education Program in Occupational Safety and Health in order to enhance the quantity and quality of occupational health and safety training programs available to the workers and employers on New Jersey.

6. We recommend that the State of New Jersey adopt measures to increase worker participation in assuring safe and healthy workplaces in New Jersey.

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1400 Sixteenth Street, N.W., Washington, D.C. 20036-2266 (202) 797-6800

STATEMENT OF
GERALD V. POJE
OF THE
NATIONAL WILDLIFE FEDERATION

BEFORE THE JOINT ENVIRONMENTAL COMMITTEES

STATE OF NEW JERSEY LEGISLATURE
AT

HEARINGS ON
THE NEW JERSEY HAZARD ELIMINATION
THROUGH LOCAL PARTICIPATION ACT 1990
(S.2058/A.2832)

RUTGERS LABOR EDUCATION CENTER
NEW BRUNSWICK, NEW JERSEY
FEBRUARY 28, 1990

My name is Gerald V. Poje, and I am the environmental toxicologist working in the Environmental Quality Division of the National Wildlife Federation ("NWF"). The National Wildlife Federation is the nation's largest citizen conservation organization, with over 5.8 million members and supporters nationwide, and with affiliated organizations in 49 states plus Puerto Rico and the Virgin Islands.

I thank the Chair and members of the joint Committee for the opportunity to provide oral and written testimony on The New Jersey Hazard Elimination Through Local Participation (HELP) Act (S.2058/A.2832). The Federation commends Senator Gabriel M. Ambrosio and Assemblyman Robert G. Smith and all of the cosponsors for bringing the HELP bill before the legislature.

NWF has been guided for a long time by the the national goal articulated last year by the President:

> People living near industrial facilities should not have to fear for their health.
>
> President George Bush
> June 12, 1989

Serious policy initiatives to guarantee freedom from fear must contain provisions to prevent chemical accidents through an open, cooperative dialogue involving community safety advocates, organized labor, and industry. The HELP bill represents the strongest state approach towards assuring this process.

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NWF supports the HELP bill because its provisions would set up a reasonable framework to bring the public and labor to the table in order to reduce accidental and routine emissions from major chemical-using facilities. In particular, the HELP bill deserves support from the New Jersey legislature and Governor Florio because its provisions:

* Assure Balanced Local Emergency Planning Committees (LEPCs). Counties and municipalities would enhance the stature of LEPCs by expanding membership to include environmental advocacy groups, labor organizations; firefighters; health and safety professionals; and community groups.

* Provide New Public Rights Of Access. Duly constituted community organizations would gain the rights to meet with the safety management of industries and to inspect facilities with expert assistance.

* Create Hazard Prevention Committees to Oversee Workplace Hazards. Trained workers would join management to investigate hazards, environmental releases and accidents, thereby ensuring a safer workplace.

Legislation Should Be Passed To Prevent Chemical Accidents

In the wake of the tragedy in Bhopal, India, Americans became more aware of the human health threat posed by chemical accidents. Three points need to be emphasized: 1. chemical accidents occur frequently in the United States, 2. industrial facilities and communities are unprepared to understand and respond to the consequences of chemical accidents, and 3. chemical accidents are not subject to thorough public investigations. Chemical accidents pose a serious threat to communities that is far more extensive than is commonly understood, and one that could be substantially reduced through a risk reduction program beginning with strong state legislation, as embodied in the provisions of the HELP bill.

Chemical Accidents Occur Frequently

The frequency of the accidental release of toxic chemicals is often underestimated. The Acute Hazardous Events (AHE) Data Base, put together by the U.S. Environmental Protection Agency (EPA), catalogued 11,048 events spanning 8 years.[1] In other words, this partial listing of the chemical incidents in the U.S. provides a record of nearly 4 accidents every day.

According to EPA, these AHE incidents alone resulted in 309 deaths, more than 11,300 injuries and nearly 500,000 evacuations between 1980 and 1988. Other EPA data indicate that, over the last 25 years, the U.S. has experienced at least 17 chemical accidents rated as having "Bhopal" potential consequences in terms of amount and toxicity of chemical released.

Under-reporting is a consistent problem in national data sets. Other, regional databases provide additional information of value. In 1987 alone, New York tabulated 1,002 incidents, a 47% increase over the previous year. During that same year, California's Hazardous Materials Incident Reporting System logged 2,491 events under a voluntary reporting system. If California's pattern was typical, that one state would have had nearly 20,000 accidents during an 8 year period - far exceeding EPA's national total. And in 1988, New Jersey reported over 6,000 chemical incidents. Unfortunately, some states have not had sufficient resources to devote to the collection of centralized information on accident occurrence. The United States lacks a thorough and comprehensive picture of national accident incidence. Yet, even the incomplete information we do possess indicates that accidents occur frequently, and have significant impacts.

Many Chemicals and Facilities Are Involved in Accidents

Many of the chemicals involved in the worst accidents, those which involved deaths or injuries, may seem familiar from reports in the news or war chronicles. Among the 684 toxic chemicals involved in the accidents catalogued in the AHE data base, highly toxic chlorine gas was involved in 125 of the 1,045 accidents with deaths or injuries. Hydrochloric acid, anhydrous ammonia and sulfuric acid vied for second place.

Some extremely hazardous chemicals, such as vinyl chloride, polyvinyl chloride, and formaldehyde, were more commonly involved in events leading to evacuations. I have included a list of the 20 chemicals involved in the most death or injury events.

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[1]U.S. Environmental Protection Agency. Acute Hazardous Events Data Base. Office of Policy Analysis, Office of Policy, Planning and Evaluation. 1988.

About 70% of the accidents described in the EPA review occurred at fixed facilities. The other 30% occurred during transportation of the toxic chemicals. Accidents at the facilities of primary producers account for the largest share of death events, 39%, and events at these facilities resulted in the most injuries, 3,377. Distributors ranked second in injury events with 25%, secondary producers third with 17%, end users for 9%, and waste disposers for only 1% of the injury events.

Chemicals in the Most Serious Events

Chemical	# of Events
Chlorine	125
Hydrochloric acid	68
Ammonia (anhydrous)	67
Sulfuric acid	63
Sodium hydroxide	27
Ammonia	26
Nitric acid	18
Toluene	17
Styrene	14
Phosphoric acid	12
Toluene diisocyanate	12
Benzene	11
Phosgene	11
Sulfur dioxide	11
Methyl ethyl ketone	10
Acrylonitrile	9
Hydrofluoric acid	9
Methylene chloride	9
Hydrogen sulfide	9

According to the information presented in the EPA document, equipment failure is responsible for nearly half of the accidents that are occurring. Operator error accounts for about 20%, and the remainder result from a variety of possible causes. Over half of the accidents are occurring under completely normal operating conditions. The major causes of accidents are the very ones that could probably be better controlled.

The Tip of the Iceberg?

While the EPA database covers a broad section of the accident spectrum, it focuses primarily on air releases that might have had the potential to be an immediate and catastrophic human health disaster of the kind witnessed in Bhopal, India. However, this database represents only a portion of the problem posed on a national scale. The database does not include all hazardous chemicals, a nationwide survey of accident responders, or an assessment of the long term health effects of exposure to toxic chemicals.

A great variety of chemicals were excluded from the database. For example, petroleum-related accidents and those involving polychlorinated biphenyls (PCBs) were excluded. As we have learned from the recent Exxon Valdez incident and the Exxon pipeline spill in northern New Jersey, the potential for environmental damage from petroleum cannot be understated. Furthermore, petroleum products not only pose explosive hazards, but many petrochemicals including benzene, and other volatile hydrocarbons are considered to be carcinogenic.

Twenty five percent of California's accidents involved petroleum or its products. The EPA has chosen to exclude these incidents from consideration.

Five years after the tragic incident in Bhopal, where more than 3,000 people died and over 100,000 were injured, accident-related deaths and injuries continue to accrue. Chronic health impacts in the population of 11,300 people exposed during the incidents catalogued by EPA are not known, nor are they currently under investigation.

Industries and Communities Are Unprepared

In 1985, EPA launched its voluntary, national Chemical Emergency Preparedness Program (CEPP) to foster community planning and preparation for releases of extremely hazardous substances from local chemical facilities. Congress later incorporated many facets of CEPP into its more comprehensive Emergency Planning and Community Right-To-Know Act (EPCRA) provisions which became national law in 1986. Sections 301-303 are the emergency planning sections of EPCRA, and they require communities and facilities to prepare extensive emergency plans for responding to chemical accidents so as to minimize harm to the public health and the environment.

EPA's 305(b) Report: Deficiencies in Emergency Planning

Section 305(b) of EPCRA mandates that EPA must conduct a "review of emergency systems for monitoring, detecting, and preventing releases of extremely hazardous substances at representative domestic facilities that produce, use, or store extremely hazardous substances." In June, 1988 EPA released their report entitled Review of Emergency Systems: Report to Congress-Section 305(b) Title III Superfund Amendments and Reauthorization Act of 1986. This report to Congress highlights many ways in which communities are still unprepared to respond to chemical accidents, and emphasizes that more comprehensive and effective emergency planning measures must be implemented.

Facilities handling 21 selected extremely hazardous substances (EHSs) and the communities surrounding these facilities were given questionnaires to assess their emergency planning programs.

In their report, EPA examined the following areas where emergency planning efforts were found to be deficient:

1. General Management Approach
2. Prevention Systems
3. Monitoring and Detection Systems
4. Public Alert Systems

Management

The ultimate responsibility for the safe design, operation, and maintenance of a facility rests with the commitment of management to accident prevention and emergency preparedness. However, the 305(b) report found that the management approach of roughly 2/3 of all responding facilities was not dedicated to "setting goals and measuring achievements." About a quarter of the managers did not seem to appreciate the risks and hazards involved in their operations, and many facilities (especially the smaller ones) considered only worker safety issues rather than issues of community safety from chemical releases. The management of many facilities in the chemical industry are not sufficiently knowledgeable or committed to emergency planning. This lack of management commitment is reflected in limited action in the following three areas: training programs, preventative maintenance, and management improvement efforts.

Managers of many facilities are not insuring proper emergency planning training for employees. Not only may inadequately trained operators cause accidents, but without proper training, even the best emergency planning equipment and plans may provide be ineffective. At some facilities where accidents have occurred, managers have ordered operators to use equipment in ways directly conflicting with posted procedures. The 305(b) report indicates that formal training programs appear to exist only at larger facilities.

Preventative maintenance is also an essential part of effective emergency planning management, yet more than a third of all responding facilities reported that they have no preventative maintenance programs. The few that do perform preventative maintenance do so irregularly and only for a limited range of process equipment.

EPA also observed few cooperative efforts among industries to develop and share better emergency planning management techniques. In the 18 month period prior to the release of the report, fewer than one percent of the presentations at meetings and symposia on management dealt directly or indirectly with chemical safety.

All in all, EPA's reports document a very limited commitment on the part of industrial management to develop and fully implement emergency planning and prevention measures. This lack of management commitment jeopardizes the entire emergency planning process.

Prevention Systems

Chemical facilities are in large part ignorant of existing technologies and techniques available for the prevention and mitigation of accidental releases of extremely hazardous substances. These prevention system technologies and techniques are not in wide use in chemical facilities.

EPA's report found that on-going efforts to inform chemical facilities about hazard evaluation techniques need to be expanded. Hazard evaluation techniques are formal techniques used to identify process risks that could lead to an accidental release. Hazard evaluation procedures provide a means of identifying needed changes in process design, operation, or monitoring. While many respondents stated that they use hazard evaluation methods, less than half are using AIChE-recognized techniques.[2] What many facilities described as their hazard evaluation techniques were in reality little more than simple routine safety inspections. In general, many facilities seemed to be confusing the process of hazard evaluation with routine safety measures.

Chemical release prevention systems are not built into the process design of chemical facilities, as they should be. Fewer than half of the respondents recognized the need for redundant controls as backups. While facilities consider worker safety in their process design, little priority is placed upon preventing chemical releases to the environment in a facility's process design.

Available equipment and procedures to capture, neutralize, or destroy a toxic chemical before it is released to the environment are not widely used in facilities. Examples of such equipment and procedures include using emergency scrubbers and flares to treat reactive or soluble gases or vapors. However, scrubbers are not widely used as protection measures against accidental releases, and only the largest facilities have stand-by scrubbers to be used for accidents. Similarly, flares are likely to be found only at large facilities or facilities handling large volumes of chemical gases.

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[2]The American Institute of Chemical Engineers (AIChE) has published an authoritative report which identifies 11 formal hazard evaluation techniques which enable facilities to identify hazards on-site and in a process.

Because prevention systems are not widely implemented in chemical facilities, the chances of accidental releases are greater.

Monitoring and Detection Systems

Many technologies exist for monitoring and detecting chemical releases, although they are not widely in use and facilities know little about them. For many chemicals considered in the study facilities indicated a lack of awareness of the risks of chemical release and of available detection systems and their utility. Some facilities using ammonia as a refrigerant, for example, did not appear to recognize the potential risks from the release of ammonia vapor, or of the reliability of available ammonia detection systems. Such facilities frequently contain large quantities of ammonia and are often unattended at night. These facilities should be provided with information on the availability and capability of existing detection systems.

Currently, the primary method used by industry to detect releases is direct observation by process operators and other personnel who may either see, hear, or smell the release. Such a system obviously is of no use in detecting colorless and odorless gases, and effects of the gas may be harmful to the worker, who functions like a canary in a coal mine.

Some facilities use multi-detector systems to detect chemical leaks, yet the majority of these facilities use chemical-specific systems which detect only certain chemicals. Very effective laser-based remote sensing detection systems are also available, but are not in widespread use. Perimeter monitors placed outside the facility were in use by very few of the responding facilities, with limited detection success.

Public Alert Systems

Once a release has occurred, the facility must notify community contacts who in turn must know what information to request. The designated community contacts must then notify the public of dangers posed and actions to be taken. At each step, technological difficulty or procedural uncertainty may delay the notification process and prevent the public from receiving the alert swiftly.

The initial step in the public alert process is the facility's notification of the appropriate community officials. The two primary channels are commercial telephones and two-way radios. Although these represent the most common form of communication systems, experts do not consider them reliable. Telephones may fail (perhaps due to the chemical accident) or may be busy.

Two-way radios may operate at different frequencies, may be found inoperable, or may be difficult to use because of heavy traffic on the appropriate frequency. Communication systems designed to overcome such problems, such as 911 telephone systems or separate telephone lines not linked with commercial traffic, were not commonly used in the communities surveyed. Advanced communications equipment existed in relatively few situations.

Two thirds of the facilities responding to the survey did not have clear decision-making procedures for determining when a release justified notifying communities about the release. The majority of facilities described rather vague procedures or did not describe procedures.

The next stage in the public alert process is to both alert the affected public of the danger and to notify them of what steps are to be taken. A variety of media, including radio, sirens, P.A. systems, and door to door visits were all used in plans for alerting and notifying the public. The 305(b) report states that all of these systems would be effective in alerting the public in an emergency with a 3 to 4 hour lead time. However, in the event of a chemical accident where warnings may be needed in a matter of minutes, the majority of systems in place would most likely not provide an effective warning in time. Few communities were found to be using the most sophisticated warning systems technologies, even in communities with large numbers of people and high-risk populations.

While almost two-thirds of communities responding indicated that they had a written warning plan or procedure of how to notify the public, half of the communities were not able to describe clearly what these procedures were. This suggests that many of the communities do not fully understand the contents of their plan and were not able to communicate the plans.

Upon being notified of an accident, the community needs to know the specific details of the situation in order to decide necessary actions. However, many communities did not know what information to ask for in an emergency. Relatively few communities indicated a need for information on plume or release location, speed of dispersion, potential pathways, or protective action recommendations.

Many communities were geared to an all-or-none evacuation only policy; such policies may reduce the decision making process, but may increase the threat to the public by unnecessarily exposing people to chemicals from which they would be better protected by remaining indoors. Very few communities indicated the need to know what the facility was doing to control the accident or whether community assistance was needed.

Two-thirds of the communities had no clear, standard procedures for making decisions to instruct the public during emergencies and outlined only vague procedures and in a few cases no procedures.

An effective emergency planning system requires pre-accident testing and public awareness. The majority of communities have either no public information program in place, or a poorly developed one. While most communities indicated occasional testing of public alert equipment, a few reported testing less often than monthly, and some reported no testing at all. Half of the responding communities reported no coordination with the chemical facilities in their exercises. About a third of the communities indicated that they had only initial contact or no contact with the chemical facilities.

1985 and 1986 Inspection Findings in New Jersey

Studies conducted by the state of New Jersey cite specific examples of insufficient emergency planning and prevention measures.[3] In 1985 and 1986, as New Jersey representatives were creating the Toxic Catastrophe Prevention Act in response to the Bhopal tragedy, the New Jersey Department of Environmental Protection (NJDEP) began evaluating facilities that had the potential for accidental release of highly toxic chemicals in New Jersey. Independent consultants for the NJDEP conducted inspections of 25 state facilities handling six chemicals of high toxicity.[4] These inspections uncovered many deficiencies reflecting key element of industrial management programs at chemical facilities which had not been adopted or implemented, and which could lead to accidental releases. The deficiencies found in the course of these site inspections are as follows:

1. Piping and instrument diagrams were not updated.
2. Valves and piping were not adequately marked.
3. Electrical wiring was not protected.
4. Emergency backup equipment or systems were not adequately protected.
5. Emergency pressure relief devices were piped to discharge hazardous substances directly to the atmosphere.
6. Interlocks were lacking.

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[3]New Jersey Department of Environmental Protection. Basis and Background Document for Proposed New Rule - Toxic Catastrophe Prevention Act Program. Bureau of Release Prevention. September, 1987.

[4]The six chemicals targeted in the New Jersey study were allyl chloride, bromine, chlorine, ethyl mercaptan, phosgene and phosphorous trichloride.

7. Operators had the capability to override equipment alarms while operations continued.
8. Fire protection systems were inadequate, or poorly designed (hydrants were improperly positioned, fire fighting equipment was placed at inaccessible locations, and fire alarm signals were inadequate or confusing).
9. Operating manuals did not include instructions for operator action during failure of utilities.
10. Tankage at loading or unloading areas did not include high-level shut-off devices.
11. Hazardous gas monitoring sensors were not installed in areas where releases or spills from loading or unloading operations were possible.
12. Hydrogen sulfide gas monitoring sensors were not installed in the vicinity of a sulfur recovery unit.
13. Chlorine gas monitoring sensors were not installed in the vicinity of a chlorination reactor.
14. Hydrogen sulfide flares did not include safety relay or alarm from pilot light failure or supplemental fuel to increase heating value.
15. Emergency backup water supply to an emission control device to reduce the quantity of release of chlorine was not installed.
16. Fire water sprinklers were improperly placed directly above manual charging hoppers used to handle substances highly reactive with water.
17. Loading racks for an acid were in a state of severe deterioration.
18. External surfaces and supports of a brine cooled reactor were in a state of severe deterioration.
19. The wall thickness of acid containing vessels and piping was not periodically tested.

Chemical Accidents Are Investigated Haphazardly

Bhopal's lesson needs to be reexamined in an American context. Necessity is the mother of invention. Chemical catastrophe is the mother of chemical accident prevention. Two recent catastrophic accidents show us how variable the responses to accidents can be, and why prevention programs with strong accident investigation capabilities by managers, workers and the public are necessary to protect communities.

<u>Example I. Henderson Pacific Engineering and Production Company Accident - May 4, 1988</u>

The Accident

Just about noon, on May 4, 1988 the community of Henderson, Nevada was rocked by a series of four powerful shock waves when an ammonium perchlorate explosion erupted at the nearby Pacific Engineering and Production Company (PEPCON) plant.

Ammonium perchlorate is a strong chemical oxidizer used to propel solid-fuel rockets and missiles.

The catastrophic accident began just before noon as a fire in the crystallizer processing unit which removes water from the oxidizer, an area which had been the scene of previous fires. Water hoses spraying the fire proved unable to extinguish the flames, and firefighting attempts ceased after part of the roof blew off the building. A sequence of four explosions followed within a minute of each other, wherever large amounts of ammonium perchlorate were stored in polyethylene drums and high volume aluminum tote bins.

The accident killed two of PEPCON's approximately 125 employees and injured at least 250 others in the greater blast area, the youngest of whom was a five hour old infant. Shock waves shattered windows for miles around, blew automobiles into ditches, and ruptured underground gas lines.[5] Electric power and telephone service for nearly 12,000 nearby residents and businesses were disrupted.

Two hundred miles away in Pasadena, California, a seismograph at the California Institute of Technology recorded two explosions measuring 2.9 and 3.5 on the Richter scale of ground motion. Subsequent calculations by the Department of Energy rated the largest explosion as equivalent to detonation of a 7.5 kiloton warhead.

The smoke cloud billowing from the explosion and ensuing fire wafted numerous toxic chemicals into the atmosphere -- including lead oxide and hydrogen chloride. The National Weather Service tracked the cloud for over 350 miles from the accident site as far as Salt Lake City, where it was estimated to be 15 miles long and 6000 feet thick.

The American Insurance Association associated nearly $100 million of insured property damage with the 10 minutes of violent explosions. Gary Bloomquist, the Henderson City Manager, projected that uninsured losses would cost $20 million in addition to an estimated $3 million worth of insurance deductibles. Immediate estimates by federal and state agencies placed economic damages at $73 million.

Five hours later, by the time the fires had subsided to a smolder, twelve PEPCON buildings were reduced to the rubble of cracked foundations and twisted girders. A crater 400 foot-wide by eight foot deep had been formed in the desert.

5Personal communication with Robert King, Nevada Emergency Response Commission, on May 12, 1988.

All the workers have lost their jobs. Not more than 200 yards from the blast site stood the collapsed remnants of the Kidd & Company marshmallow factory, where 85 people had also lost employment.

Approximately forty insurance carriers have filed suit against PEPCON for criminal negligence. Also named in the suit were the state Occupational Safety and Health Administration (OSHA) and the Clark County Fire Department. Key issues include the amount of ammonium perchlorate stored, the safety of the storage containers, prior knowledge of safety violations, adequacy of inspections, and appropriate recordkeeping.

The Analysis

On May 12, 1988, Governor Richard H. Bryan created The Henderson Commission by executive order to examine the adequacy of existing regulations pertaining to the manufacture, storage and transportation of highly combustible materials in the state of Nevada. The Commission's membership was broad. It included the Lieutenant Governor, a local elected official, a city manager, a union representative, a community religious leader, a fire marshal, a firefighter, a business leader, and an EPA scientist.

Provided with staff support, the Commission was directed to answer several important questions:

Why did it happen?
Could it have been prevented?
Where could people turn to for help?
What was the extent of the damage?
Who was in charge?
How can the state make sure that such an accident does not happen again?
What other imminent dangers exist in our communities?

More than 50 hours of public testimony by informed citizens and experts were presented in nine separate hearings held by the Commission. On August 10, within its ninety day deadline, the Commission submitted its report to the Governor.[6]

6The Governor's Blue Ribbon Commission to examine the adequacty of existing regulations pertaining to the manufacture and storage of highly combustible materials. (The Henderson Commission) Final Report. August 10, 1988. Available from the Nevada State Fire Marshall Division, Capitol Complex, Carson City, NV 89710. (702)-885-4290.

Forty-three major recommendations were made in six categories: fire, health and safety, zoning, insurance, community planning and response, and transportation.[7] Nearly two years later, the status of implementation of each one of the recommendations has become a matter of public record.

A more detailed account of the Henderson disaster has been gathered by the United Steelworkers of America, based upon more than 40 hours of taped interviews with PEPCON workers and examinations of state OSHA records, EPA records and Clark County Fire Department records. In addition, specific recommendations urge improved procedures for prevention inspections and accident investigations.[8]

Example II. Shell Norco Refinery Catalytic Cracker Accident - May 5, 1988

The Accident

Less than 24 hours after the Pacific Engineering accident in Nevada, residents of Norco, Louisiana were jarred from their sleep at 3:30 in the morning by a massive petrochemical explosion at the Shell Oil Refinery. When the blast occurred, only 92 of nearly 1600 workers were on duty. The explosion ruptured a thirty year old catalytic cracker, which converts crude oil to refined oil products, such as gasoline and fuel oil.

Two weeks earlier the entire unit had been shut down for routine repairs and installation of a design modification. Corrosion in an eight-inch elbow joint in the de-propanizer elevated above the main body of the catalytic cracker released heated, pressurized hydrocarbons which exploded, destroying the catalytic cracker. A nearby control room also was damaged, as was a water supply-line for fighting the fire. Consequently, the fire raged for more than five hours.

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[7]Overall, the Commission affirmed the accountabi
businesses for providing local government with detailed
of dangers and mitigation capability. Where peril
reduced, it recommended that businesses relocate,
government develop laws to facilitate this.

The report stressed that public security
voluntary compliance with health and safety re
that penalties be increased dramatically, an
serious and repeated offenses. Recommer
that enforcement efforts must be ago
rigorous and frequent inspections. F
safety histories must be assured.

[8]The PEPCON Disaster, Henderson, Nev
by the United Steelworkers of America. 5 Ga
PA 15222. March, 1989.

Seven Shell employees perished in the accident and 42 individuals in the blast area were injured -- four critically. Property damage was extensive in the nearby communities of Norco as the explosion shattered windows, cracked walls and shifted foundations. Effects of the explosion were felt more than 30 miles away. The Coast Guard stopped traffic along the Mississippi River. Off-site costs have been estimated at $30-40 million.

Internal costs to Shell are very large. Loss of the catalytic cracker has been estimated by Shell at approximately $220 million in capital cost.[9] Estimates are not available for the many months of lost production, although the refinery had an estimated capacity of processing 215,000 barrels of crude oil per day.

On October 27, OSHA issued Shell Oil Co. a citation amounting to $3630 for three safety violations, including one for failure to investigate the integrity of the carbon-steel piping in the de-propanizer. On November 17 Shell Oil Co. denied the OSHA findings and conclusions, but paid the citation, thereby terminating any further public investigation by a federal agency. According to a Shell spokesperson, pending litigation has been estimated at approximately $100 billion.

Ironically, only two days before the accident, a Shell spokesperson had addressed the issue of accidents during a newspaper interview about toxic air emissions.[10] Roger Fowler, manager of the Shell Chemical Co. in Geismar, Louisiana and spokesperson for the Ascension, LA Community Awareness and Emergency Response (CAER) group assured residents that the threat of chemical accidents in the state was low due to the safety precautions taken by chemical plants.

The Analysis

Shell Oil has investigated the refinery accident using the internal corporate expertise of more than a dozen engineering specialists. In addition, Shell contracted the Arthur D. Little consulting firm to analyze the accident. Shell's monitoring of the environment included analysis of environmental samples on-site, upwind and downwind for more than 50 miles.

9Personal conversation with William Zolczer, safety engineer at Shell Oil, Co. in Norco, LA. November 10, 1988.

10T. Talley, "Plants plan to study air quality," Morning Advocate, Baton Rouge, LA, Friday, May 6, 1988, pg. B-1.

Shell's investigation methods and analyses are not available to the public. The Louisiana Department of Environmental Quality has investigated the cleanup problem associated with the widespread dispersal of asbestos as a result of the accident, and has collected a large report from Shell Oil Co. on their response to the asbestos cleanup.

The Lesson - Learn From Mistakes

The PEPCON catastrophe captured the attention of news media around the country. Reasonable public investigations by a blue ribbon commission and a safety-driven union followed. Far-reaching recommendations are available to guide stronger accident prevention and emergency planning for extremely hazardous chemicals.

The Norco catastrophe was deadlier and resulted in more substantial property damage. The national press diligently reported the disaster. However, no public blue ribbon commission reported to the Governor, and no federal task force has investigated the integrity of catalytic crackers.

The HELP Bill Would Promote Effective Chemical Accident Prevention

Chemical accidents at industrial facilities are frequent and pervasive problems. While individual impacted facilities and communities may learn important lessons from an accident and thereby improve safety consciousness, it is by no means guarenteed under the present system. Chemical accident prevention has not yet become a policy effectively involving the public and labor.[11]

The National Wildlife Federation urges broad support from the New Jersey Legislature and Governor Florio's Administration for the HELP bill because its provisions would achieve three important goals:

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[11]In 1986, Congress passed the Emergency Planning and Community Right-to Know Act (EPCRA), requiring industry to share with the public information about hazardous chemicals to prepare for chemical release accidents. An unfair burden of responsibility lies on the shoulders of community volunteers for analyzing facility hazards and their potential impact on the community. The Occupational Safety and Health Administration (OSHA) has not revised its standards for hazardous materials to reduce the risks of chemical accidents. Furthermore, OHSA's narrow jurisdiction over workplace safety is inadequate to address community protection from accidents.

1. Assure Balanced Local Emergency Planning Committees (LEPCs).

   * Counties and municipalities would enhance the stature of LEPCs by expanding membership to include environmental advocacy groups, labor organizations; firefighters; health and safety professionals; and community groups.

The most effective local emergency planning committees are those that have emphasized "fair and full representation" and which contain guidelines for balanced representation from community groups and facility owners.[12] The HELP bill's provisions present a significant improvement over the federal law which created LEPCs[13] by building a greater and more equitable role for important members of the public.

Furthermore, the bill's provisions would establish reasonable and fair access to relevant information regarding the accident potential of each facility and an appropriate local mechanism to fund LEPC activities.

2. Provide New Public Rights Of Access.

   * Duly constituted community organizations would gain the rights to meet with the safety management of industries and to inspect facilities with expert assistance.

New Jersey, California and Delaware have increased the burden of proof on industries which handle dangerous chemicals by requiring specific risk management plans. Under these plans, industry is asked to evaluate the potential for accidents, calculate the impacts on the surrounding community, and identify the safety technology and training necessary to prevent accidents.

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[12]Lynn, Frances M. 1989. Citizen involvement in using community right-to-know information for emergency planning and source reduction. AIr & Waste Management Association. Presented at the 82nd Annual Meeting, Anaheim, CA June 25-30, 1989.

[13]See The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, (CERCLA), 42 U.S.C. Section 9601 et seq., also known as Superfund, as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub.L. 99-499, 100 Stat. 1613 (Oct. 17, 1986)(SARA).

Existing state accident prevention legislation may well save a great deal of money in clean-up and liability costs, as well as prevent needless death, injury and damage. However, these approaches, while sound building blocks for accident prevention, do not address the sytematic failure to involve the public in assuring the safety management of chemicals in the community.

New Jersey has made great strides towards chemical accident prevention by improving the capability of the New Jersey Department of Environmental Protection to regulate industrial facilities through the Toxic Catastrophe Prevention Act (TCPA).[14] The HELP legislation would constitute an important non-regulatory advancement toward accident prevention beyond that which is confered by the TCPA by empowering qualified local community groups to be informed of the facility's hazards analyses and prevention and response plans.

Since accident prevention as a paperwork exercise is only part of the solution, qualified community groups under the HELP provisions would also be empowered to inspect a facility each year and after each unusual release. The HELP legislation would also remove a serious barrier to effective community inspections by creating a technical assistance grant program through the Department of Environmental Protection for hiring accident prevention experts.

3. Create Hazard Prevention Committees to Oversee Workplace Hazards.

* Trained workers would join management to investigate hazards, environmental releases and accidents, thereby ensuring a safer workplace.

In too many facilities workers remain hidden assets in the battle to prevent chemical accidents. Recently, Robert E. Wages, Vice President of the Oil, Chemical and Atomic Workers International Union (OCAW) testified before Congress regarding the role of workers in preventing chemical catastrophes.[15]

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[14]N.J.S.A. 13:1K-19 et seq.

[15]Testimony of Robert E. Wages, Vice President of the Oil, Chemical and Atomic Workers International Union concerning the October 23, 1989 Explosion and Fire at the Phillips Petroleum Company, Houston, Texas Chemical Complex, submitted to the Envirnment and Housing Subcommittee of the Committee on Government Operations, U.S. House of Representatives, November 6, 1989.

After reviewing details of the tragic Phillips Petroleum accident and several others where workers were killed and injured, Wages concluded:

> ...the workers were not involved in process safety inspections nor were they provided with the results of any such inspections nor were they asked for their recommendations or input. (See attached testimony)

The HELP provisions would rectify this problem by building a new committee of hazard prevention advocates drawn from management and from workers. Entrusted with the responsibility of maintaining a safe workplace, hazard prevention committees would regularly meet to identify hazards and review any special safety problems.

SUMMARY

Chemical accidents occur frequently in the United States. As currently managed, industrial facilities and communities are unprepared to understand and respond to the consequences of chemical accidents. In addition, chemical accidents are not subject to thorough public investigations.

Chemical accidents threats to communities are far more extensive than is commonly understood. This problem could be substantially reduced through a risk reduction program beginning with strong state legislation, as embodied in the provisions of the HELP bill. NWF supports the bill because its provisions would set up a reasonable framework to bring the public and labor to the table to promote chemical safety.

TESTIMONY OF ROBERT E. WAGES, VICE PRESIDENT
OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION

Concerning

THE OCTOBER 23, 1989 EXPLOSION AND FIRE

AT THE

PHILLIPS PETROLEUM COMPANY, HOUSTON, TEXAS CHEMICAL COMPLEX

Submitted to the

ENVIRONMENT AND HOUSING SUBCOMMITTEE
OF THE
COMMITTEE ON GOVERNMENT OPERATIONS

U.S. House of Representatives

November 6, 1989

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Mr. Chairman and members of the Subcommittee, my name is Robert Wages and I am the Vice President of the Oil, Chemical and Atomic Workers International Union.

With me is Mr. "Red" Moore who is a member of our Houston Local - OCAW Local 4-227. Mr. Moore is also the chairman of the Worker's Committee of the 525 workers represented by OCAW at the Phillips Petroleum Company Houston Chemical Complex.

I think its fair to say that all of us in this room are deeply saddened by the events of October 23 in Houston. Speaking for the 100,000 members of our Union who labor in our nation's chemical plants, oil refineries and nuclear facilities, I can say we are not only saddened but outraged. We are here today in an effort to help us all gain a better understanding of how this terrible catastrophe was allowed to take place. We believe the evidence will show that this catastrophe was a disaster waiting to happen -- that the consequences were foreseeable. It is also our belief that this tragedy is only the most recent chapter in a long history of similar events sharing similar causes and outcomes and that the Houston fire and explosion portends even greater disasters to come. It is our hope that these deliberations will lead to the development of measures that render such tragedies obsolete and subordinates emergency response to prevention.

Let us begin.

At 1:09 PM, October 23, polyethylene reactor #6 vented its contents to the atmosphere through an open reactor block valve on dump leg four. Reactor #6, one of the largest in the world, has a capacity of 17,500 gallons of process gas and product. The process gas is primarily iso-butane and ethylene. The product is polyethylene resin in a fluff form. Within two to

five minutes the vented process gas and product created an open air vapor cloud that engulfed the reactor complex #4, #5 and plant five finishing building.

The vapor cloud was ignited by an unknown source and exploded with the force of ten tons of TNT. The resulting shock wave measured between 3.5 and 4.0 on the Richter Scale at Rice University.

The human cost was catastrophic. There are known and presumed to be twenty two fatalities. One hundred and nine workers were injured. Eight are still in the hospital as of this writing.

Debris from the explosion was thrown as far as six miles into the community. Portions of the facility fell like rain over residential areas, schools and public highways. Thousands of windows were broken or blown out throughout the Pasadena community and undetermined quantities of asbestos and other chemical pollutants were propelled or vented to the atmosphere.

The polyethylene plant is completely destroyed. Several work shops, motor control centers, cooling towers, storage and distribution buildings and the administration building are either completely obliterated or badly damaged. Replacement costs have been estimated at up to one billion dollars.

The Phillips Petroleum Houston Chemical Complex (HCC) manufactures various plastic resins. The polyethylene plant produced 1.5 billion pounds of resin a year. This represents between 15-20 percent of the United States supply (12). There are eight polyethylene reactors at the HCC.

The number six polyethylene reactor is a sixteen story tall double loop Phillips type reactor. The Phillips process reacts ethylene gas and catalyst in an iso-butane slurry to produce polyethylene resin. The reaction pressure is 600 pounds per square inch and runs at 225 degrees F. The

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polyethylene product is removed from the reactor through six dump legs at the bottom of the loop. The dump leg can be isolated from the reactor by closing the reactor block valve. This reactor uses an eight inch "ball valve" manufactured by Demco. It is commonly referred to as "the Demco". It is opened and closed by means of an air operated actuator.

The polyethylene product can clog up the dump legs. Clogged legs reduce the rate of production of product. To maintain high rates of production the legs are un-clogged while the reactor continues to operate. During the un-clogging maintenance, the dump leg is physically separated from the reactor. This leaves the Demco valve as the only containment between an operating reactor and the atmosphere.

On the morning of October 24, OCAW learned that Phillips intended to begin its initial investigation into the accident. When the union notified the company that it intended to exercise its contractual right to participate in the investigation the company refused, ironically citing safety reasons for its refusal. The Union was subsequently forced to obtain a temporary restraining order to compel Phillips to allow union safety representatives and experts onto the site during initial and subsequent investigations. Phillips and Fish Engineering, an outside contractor performing maintenance work on the polyethylene plant when it exploded, were further ordered not to tamper with equipment and documents at the site.

The following is largely based on the observations of local union safety representatives, union experts in occupational health and safety and chemical engineering who were involved in on-site inspections and interviews with several dozen OCAW members who were close to the scene of reactor #6 in the hours prior to the explosion.

Preliminary investigation has identified three primary factors in the uncontrolled release; inadequate maintenance lock-out policy, the use of sub-contractor maintenance crews to work on primary reactor systems as a cheaper supplement to the regular work force and an inherently flawed reactor design.

The Phillips Petroleum lock-out policy is inconsistent with OSHA standard 1910.147 and good industry practices. The rule and industry practice is built around several principles. Maintenance will not be performed on live systems, unless the system is blocked, bled, blanked, disconnected and otherwise made free of the hazards of unwanted movement or releases. This is accomplished by the use of workers placing a paddle lock at the proper place in the system and/or the identification of locked out systems and controls with "Do Not Use" informational tags. These procedures have to be done within a permit system. This is commonly called a lock-out permit, signed by a designated supervisor.

At the HCC the Standard Operational Practice to lock-out the Demco valves during maintenance is to remove air lines to the actuator, place a lock-out device in the Demco valve and to close control airline valves. Currently, the lock-out device is not locked in place, maintenance workers do not have to place their personal lock on the valve, there are no accompanying information tags either at the valve or in the control room and the electronic controlled air solenoid is not de-energized. The control air lines are not tagged with appropriate warning tags.

Initial and preliminary investigation found that dump leg #4 on reactor #6 had been removed. The Demco valve to this leg was found in the open position. It was found that the #4 leg Demco valve did not have the lock-out device in place, the air control lines were attached and at least one air

block valve was open.

Fish Engineering and Construction has been the primary maintenance sub-contractor at the Phillips HCC for several years. Fish supplies a force of 225 laborers and craft workers to supplement a force of approximately 145 maintenance craftsmen employed directly by Phillips. The company is strongly motivated to subcontract as these workers have no labor agreement and can be compensated at approximately 65% of that of a Phillips employee.

Fish contract labor was frequently assigned to the task of removing and unplugging the dump legs on the polyethylene reactors. The investigation found that a Fish Engineering sub-contracting crew was working on the dump legs of reactor #6 when the massive release occurred. It was also determined that Fish Engineering did not have their maintenance crew lock-out or tago out the #4 Demco valve.

On the day of the catastrophic release it has been reported that the sub-contractor crew was "unfamiliar" to a regular employee.(1) Another regular employee reported that one member of the Fish crew was unable to speak English.

The investigation has identified several specific safety related incidents that relate to the training and experience of the Fish Engineering subcontracted workers.

Approximately six months ago a Fish Engineering supervisor asked a plant operator to open the Demco valve to atmosphere in order to blow out a plug. The worker refused and reported the incident to Phillips management.(2)

In late August there was a lock-out incident that left one union member dead and four others injured. Fish Engineering sub-contractors opened piping to the off-gas scrubber tank without isolating the line. The line vented

flammable solvents and gas into an adjoining work area. The gas and liquid ignited and burned the workers. OSHA cited Phillips for improper lock-out procedures in this incident. (3) One of the contributing factors was that neither operations or the union were notified that Fish Engineering was working in this area.

Two days after the catastrophic fire and explosion there was a nitrogen release at the polypropylene plant. This was caused because Fish workers used the wrong flanges to blank the polypropylene reactor.

The design characteristics of the #6 reactor had several basic flaws. These include non-fail safe systems, unrecoverable systems, and a lack of a dump and flare system adequate to counter or minimize the loss of reactor contents. The Phillips loop reactor was designed with no automatic safety systems that could shut a valve venting to atmosphere. The actuator, the device that actually opens and closes the valve, did not have a fail safe closing energy source. In other words if there is an air pressure loss there is no way to move the valve. Because of the type of valve and type of actuator there is no recovery once the valve is opened if air supply or power to the air supply is interrupted. Finally, the reactor did not have a high pressure dump and flare system in place to allow the pressurized contents an alternative flow pattern except for the uncontrolled release through the reactor block valve.

The investigation has identified a number of other factors that appear to have set the stage for the catastrophic accident and contributed to its tragic outcome. Other factors include pressures to keep production rates up. a relentless effort to reduce labor costs by reducing the proportion of Phillips employees on the plant workforce, a flawed alarm and evacuation

program, and inadequate enforcement of OSHA regulations coupled with a lack of appropriate regulations.

The weekend before the release #6 reactor was having production problems. These arose because the ethylene feed gas had acetylene gas contamination.(4) Acetylene is a poison to the reaction. To counter the poisoning effect of the acetylene, the operators need to increase the ethylene feed rate. While increasing the ethylene feed rate restores the reaction, it also produces "bad" product that is more likely to clog the legs. As the legs get clogged the reactor production rate is also reduced. Un-clogging legs as soon as possible means increased production. To get the job done as quickly and cheaply as possible out side contractors are called in.

In spite of massive expansions at the HCC in recent years, Phillips has kept the number of workers on its payroll relatively constant. This was largely achieved by the increased use of subcontracted workers in maintenance and the incresed use of overtime in the operations department.

The company has eliminated the day breakers and made this "lost" shift through overtime. The vacation relief force was also eliminated and again these vacancies were filled with overtime. Phillips also implemented an incentive program to encourage experienced workers to take early retirement. While all of these policies had the effect of further reducing direct labor costs, they also reduced overall experience levels on the site. Phillips has a confusing and ambiguous alarm and evacuation procedure. This is compounded by the fact that there was little if any training with the procedure. There are two alarm systems at Phillips HCC, a fire alarm and an air horn. Contractors are told if the fire alarm is sounded they should evacuate.

Plant personnel are told to hold their position until they are told to evacuate. When the workers had evacuation training, the company used three blast of the air horn.

Approximately 20-30 seconds after the reactor vented, the fire alarm sounded. The fire alarm is the evacuation alarm for contractors, but not for regular employees. This investigation has found that is was the visual sight of the release and the sight of other workers running away that signaled the workers to evacuate. Some workers have stated that the alarm actually stopped during the release.(5) Any estimate of the number of casualties caused by the ambiguous nature of the fire alarm would be speculative. Workers in the finishing building could not see the cloud and were in an excessive noise area where ear plugs were required.

The investigation found that the evacuation horn did not sound during the incident. The last training for evacuation for some workers was two years ago.(6) There were just two evacuation training sessions in the last five years. (7)

There were also reports that the wire concertina on top of the perimeter fence prevented workers from climbing to safety and resulted in injury to some who tried.

After the August 25 fire and subsequent death of a worker, OSHA cited Phillips with one serious violation of the Act. Phillips was fined $720.00 and given until October 4 to initiate the use of accident prevention tags. That would have been nineteen days before the catastrophic release and explosion. Phillips thought best to contest the citation rather than comply with it.

In April of this year an OSHA inspection found a hazard that they could

not cite the company for because they did not have a standard. This involved another complaint on mandatory excessive overtime. If a true process safety standard were in place, there would be limits on overtime.

The last time OSHA conducted a comprehensive inspection of the facility was 1975.

Before proceeding to a discussion on the industry as a whole, on systemic problems and recommendations, something needs to be said about the role of the Union.

Workers face a special kind of jeopardy in a situation like this. Not only do they face injury or death, but may subsequently suffer loss of their jobs; temporarily if the plant is rebuilt or permanently if it is closed. This is a special kind of double jeopardy that applies to no one else including the company--the price Phillips stock actually jumped by 50 cents per share the day following the disaster.

A union is the only institution that can be expected to inform workers of their rights under OSHA -- to file complaints, to be present during inspections or to pursue matters before the Review Commission. A union is the only institution that regularly defends workers against retaliation for resisting unsafe practices. And the union is the only institution that really makes the workers right to refuse unsafe work a reality.

By way of illustration, the local union in Houston has been actively involved in efforts to reshape or resist unsafe policies and practices. For one thing, none of the previous OSHA inspections were done at the request or the initiative of Phillips or OSHA except the August 1989 incident involving a fatality. There are other examples.

From September of 1987 to August, 1989 the local union raised specific

complaints on sub-contractors. On seven specific occasions the local union complained to management of sub-contractors doing either unsafe work, working on critical systems or failing to notify Phillips of their intent to work in the area. (8)

At the August 8, 1989 Union management meeting the company reported that "June and July were disastrous and we have suffered one injury already in August." (9) The union at these monthly meetings brought up five instances of supervisors not following plant safety rules or ordering workers to violate safety rules.(10)

Systemic Problems

The explosions and fire in Houston taken together with our experiences generally within this industry have led us to conclude that there are problems systemic to this industry within the context of the present economic, political and regulatory climate. By way of illustration let's take a look at several other recent catastrophes in the industry.

One of the most serious explosions in recent history occurred at the Union Oil, Lemont, Illinois refinery in 1984. But even the 17 deaths that occurred as a result of that conflagration pales beside the Phillips Chemical disaster. As a result of the 1984 disaster, OSHA has requested criminal charges be leveled against the company. This has happened only 48 times in OSHA's twenty-year history.

The Union Oil investigation precipitated an eight week trial in which the administrative law judge upheld the OSHA charges. Specifically, the judge ruled that the company failed to inspect for cracks in its pressure vessels, establish emergency evacuation procedures, provide fire-protective clothing for operating personnel or adequately train the refinery's fire

brigade. Ten of the 17 deaths included firefighters.

On May 5, 1988, seven OCAW members were killed and 22 injured when the catalytic cracking unit at the Shell Oil, Norco, Lousiana refinery exploded. The cause of the blast was a failed eight-inch elbow in the depropanizer overhead pipe in the catalytic cracking unit. Internal corrosion caused the elbow to failure.

OSHA cited Shell for not following upon omission or conflicting test data collected in 1980, 1983, and 1985. The data indicated a potential problem and the company's failure to investigate that potential problem led them to believe that the piping wall thickness was adequate.

The company was also cited for deficient engineering design of the ammonia and treated wash water injection system, which brings anti-corrosive agents to the vapor line.

Both of these tragedies bring up a salient point: the workers were not involved in process safety inspections nor were they provided with the results of any such inspections nor were they asked for their recommendations or input.

A further point is that preventive maintenance is not practiced; the mode of operation is "catch it while it's running". Most continuous process plants are running at capacity with limited regular workers staffing the units.

Before going into the statistics on the cutbacks in regular manpower, I'd like to bring your attention to a couple of more disasters or near disasters.

Mobil Oil Corp.' Torrance, California refinery was the subject of a comprehensive inspection by OSHA in the wake of at least four explosions in

the past two years that killed two workers and injured 16 other employees. Explosions occurred on July 15 and August 5, 1988. Two workers were injured at the Mobil facility August 5, 1988 when the crude unit cooler exploded, resulting in a fire. Ten workers were injured and one killed July 15, 1988 in two separate explosions in two areas of the facility involving a processing solution used with an oil sludge tank and a water treatment area. What is significant about all these fires and explosions is that they all involved subcontractors according to the company.

Finally, let me describe a massive chemical release that could have led to another Bhopal. Contractor and company error caused a hydrofluoric (HF) acid release and the evacuation of nearly 3,000 residents of Texas City, Texas on October 30, 1988. The acid was released after a crane operated by a contractor during an annual tank cleaning process dropped its load on a storage vessel at the Marathon Oil Company refinery. The company had no back-up safety system.

Approximately 30,000 to 40,000 pounds of the acid were released in a vapor cloud. Nearly 800 people were treated at area hospitals for symptoms related to exposure.

One of the biggest lessons from the accident is how much the regular workers are at risk from contractor work practices.

Other failures of the incident included the fact that the emergency siren system was not turned on until most of the damage was done. The siren nearest the accident was not working. Further, people did not know what to do when the sirens sounded. The phone system failed.

These are just a few of the catastrophes that have hard hit the chemical process industry and they are narrated to illustrate some of the systemic

problems of the industry.

Perhaps the most pervasive of the systemic problems concerns the whole system of labor subcontracting or contracting out as its often referred to. *Subcontracting

Today there are 25 million so-called "contingent" workers, making up 25% of the total workforce. This includes contract workers and temporaries. This number has risen over 120% in the last five years. The numbers and trends are so shocking that it is clear that a revolution is underway--one which will redefine the term "alienation".

Obviously, many of these jobs are in the rapidly growing service sector. However, it is generally unrecognized that the so-called "good" jobs in manufacturing, that have remained stable at 20 million over many years, are being qualitatively eroded by this process.

The creation of this type of "second class" workforce is having a profound effect on our society--on family, neighborhood and community as huge populations are cut off from lifetime job opportunities and forced into a highly mobile, drifting and often impoverished sub-class. Dust-Bowl visions of caravans of migrating workers are no longer distant memories, but are a present day reality as industry is jettisoning all but the most essential workers, creating, and at the same time tapping this new, cheap and flexible "just in time" workforce.

Contract labor, that is temporary labor supplied by labor sub-contractors, has been an integral part of the refinery-chemical plant workforce population for many years. Traditionally, these workers were employed only in times of emergency, during plant turnaround or in new construction projects when the regular workforce was not sufficient to handle

the overload.

Very few contract workers have union contracts. This is largely due to high turnover and a high degree of transience. Most union contracts exist between the chemical company and its directly employed permanent workforce.

The majority of union contracts prohibit contracting where it would displace a union member. This does not, however prohibit the industry from replacing a retired, dead or disabled union worker with a contract worker. And this is exactly what has happened. Today, we have a good number of groups where the contract workforce in maintenance outnumbers the directly employed force. In some case the directly employed maintenance workforce has been squeezed entirely out of existence.

In non-union plants, the trend has been much more dramatic. In Louisiana, for example, the majority of refinery-chemical plants have maintenance workforces that are 100% contractor-supplied.

This process has been augmented by the destruction of major industries such as steel, autos, mining, oil and gas and other large industries that employed large numbers of skilled workers. Labor contractors have moved in, mobilizing these armies of unemployed and deploying them back into the system at the expense of an equivalent number of permanent workers who are subsequently displaced into the ranks of the unemployed.

The material incentives driving this process are considerable. Contract workers in our industries are paid anywhere from $2.00 to $6.00 per hour less than OCAW members. Moreover, benefits in most cases, are almost non-existent--perhaps 0-5 percent of payroll compared to 30-40% for OCAW workers. Most have no medical insurance, no pension, no holidays and perhaps no more than one week of vacation. And, with contract workers, the primary employer

no longer has to concern itself with hiring, firing, discipline,payrolls, accounting functions, etc.

As attractive as these incentives may sound, they pale when compared to the primary and central advantage to the contract system--that being flexibility and CONTROL. Contract workers represent a "just-in-time workforce" similar to the "just-in-time" inventory systems adopted by many manufacturers in recent years. More important is the employer's ability to throw out the entire workforce and order up another the moment that the workers begin to engage in any activity that might be interpreted as uppity.

Under present law, it is even today quite difficult for an employer to dump its entire unionized workforce and replace it with another, more docile one. Not so with contract workers. Contracts that exist between the primary employer and the contracting firm are generally cancellable on very short notice and require no cause. Even if the contract workers have a labor agreement with the contractor, it is useless under these circumstances.

In June, 1984, 370 OCAW members were locked out of the BASF chemical complex at Geismar, La., two hours prior to the expiration of their contract. Subsequently, all 370 were replaced by workers supplied by several area labor contractors. By various means, the locked out workers were able to obtain documents detailing the day-to-day activities of the largest supplier of contract labor to BASF.

Turnover among contract workers at BASF was close to 100% per year. This constant churning was due to several factors. A good number just quit because they were terrified of the conditions. Others left the moment they found a permanent job with health insurance, pension benefits, etc. Others were canned for the slightest infraction of any kind. And many were dumped

the moment they were injured. To describe contract workers as "disposable" or "throwaway" workers is almost an understatement.

These workers were almost always laid off for "lack of work" as opposed to being fired. The contractors were already at the maximum for unemployment insurance premiums, so additional layoffs could be undertaken at the cost of the system. In this way the unemployment insurance system underwrite, subsidizes and encourages the flexibility features of the contracting system.

The training of workers as to operating, maintenance and safety procedures or the chemical dangers present is defeated if not nullified by the constant churning of the workforce. A study done by the Department of Labor ten years ago analyzed Workmens Compensation claims in five states and found that the majority of on-the-job injuries occurred to workers in their first 3 months of employment. This is precisely why injury rates among contract workers and at BASF are notoriously higher than for the rest of the working population.

Subcontracting Survey

OCAW has been conducting a survey of subcontracting practices among our membership in plants with 100 or more employees. The survey is indicative of a number of problems. First, according to preliminary estimates based on a 50 percent return rate, 10,000 out of 43,000 regular workers were replaced by contractors which works out to 23 percent.

Seventy four percent of the 123 respondents reported that subcontractors got less training about safety rules when they enter the plant. Sixty eight percent reported that subcontractors get less training on hazardous materials with which they will be working than the regular workers. Seventy percent of the respondents reported that the subcontractors got less training than the

regular workers on emergency response procedures. And 62 percent reported that more accidents and near-misses are caused by subcontractors as contrasted with regular workers.

Overtime Survey

OCAW has also been conducting an overtime survey. According to our preliminary analysis of 125 returns, again among plants with 100 or more members, overtime is routine. Fifty-five percent of the members surveyed reported working overtime. Fifty-one percent of these reported working anywhere from 1-9 hours and 37 percent reported working 10-19 hours of overtime weekly. So another problem in an industry that requires alert, vigilant workers is that the workers are going to be tired at least part of the time. The practice saves the company the greater cost of hiring more personnel to help with the workload.

OSHA

Why can't OSHA address the problem? First of all, OSHA lacks the manpower to exercise any meaningful supervision over these plants. Plants in the petrochemical industry are usually exempt from regular OSHA inspections as their accident/injury record is fairly low. What is bad about this state of affairs is that when an accident does happen in the industry, it is usually a catastrophic one involving the loss of many lives, damage to the community and extensive property damage.

More enlightening is the Compliance Officers' Directive CPL-2-2.45 which arose out of OSHA's Special Emphasis Program in the Chemical Industry. This was a program that was discontinued in September 1986 because of lack of funds. However, out of the program came the compliance directives on System Safety Compliance. If OSHA ran their criteria in these directives through

the compliance procedure, Phillips would fall short and be cited in many system areas. These include fail-safe mechanisms such as self-closing valves on vessels containing flammable liquids, control valves that would stop the input of reactants, closing slow enough to prevent the water hammer and emergency air or nitrogen supply for continued operation of critical valves in case of loss of plant utilities.

OSHA has sent out two drafts of a process safety standard, the first written by a consortium of industries under the consulting firm of Organization Resource Counsellors. A second draft has now come out and not much has changed. Management has all the initiative for evaluating the system safety hazards and there is no room for worker input.

I should explain that what I is meant by a safety process standard. It is most emphatically not a team of experts; these teams have led to the catastrophes we are addressing today. A meaningful process safety standard will include as a minimum: scheduled preventive maintenance, staffing levels, emergency response procedures and training in those procedures, hours of work and records on all of the above.

To give you an example of how important worker input into the safety process is, let me tell you the story of a recent tragedy at the Amoco Yorktown refinery. Employees drained excess quantities of naphtha from a knock-out drum to the atmosphere in the proximity of a potential ignition source. A worker, George Brannigan, wrote a memo to Amoco outlining a schematic diagram of how the condition could be corrected. Amoco ignored the memo. The result was an explosion ironically killing George Brannigan who had the solution to the potential disaster. Workers know the process and are at the point of production. We have to start taking a look at a much

different way of ensuring plant safety.

Twenty years ago organized labor built on the momentum created by the environmental movement and successfully mobilized its members to force Congress to pass the Occupational Safety and Health Act of 1970.

The basic premise of the law was that all workplaces must be free from hazards that could cause death or serious harm. This Congressional mandate of Congress was subverted by ensuing administrations to accept the idea that the company should abide by the law through self-regulation. As I mentioned before, federal and state inspectors are too few in numbers to lend any meaning to the law. In addition, they have been susceptible to White House pressures to go easy on the employer.

There is a consensus in Washington that the less government the better. The government, least of all the Congress, refuses to act on health and safety. OSHA is paralyzed by an Administration that spans two presidents who don't believe in governing. As a result of these practices, the continuous process industry is almost totally unregulated and lawlessness prevails.

A decade ago, organized labor won the Right to Know the names and effects of the substances with which they work. The struggle to win this right was a long one but we endured and won the battle.

Knowledge is not enough, however. Workers need the right-to-act on what they know. Giving workers the Right-to-Act would go a long way towards resolving the problem of too few OSHA inspectors with too little training in inspecting the petrochemical industry.

We envision the Right-to-Act as providing workers with the following:

a) All the duties and powers of an OSHA inspector. Workers would be deputized as OSHA inspectors and have the right to issue citations.

b) Workers would be provided all the training provided to OSHA compliance officers. The training would be done at the company expense.

c) The workers would have the right to bring in experts of the worker's own choice to help with investigations.

d) The company would have to give the workers advance notice of new work processes, chemicals, and equipment that could harm health or damage the environment.

e) The workers would be part of any company charged with inspecting the plant and equipment for wear and tear that could lead to catastrophe.

f) Workers would have the right to refuse work that is unsafe, unhealthy or damaging to the environment.

Unless the above rights are incorporated into law, U.S. communities and workers will live in fear that their plant will play host to the next catastrophe. Employers have abdicated their responsibilities to provide a safe and healthful workplace. We need a new agenda that will make the victims a key ingredient in the regulatory process. Without this, we are in chaos.

Interim Solution

The Right-to-Act is OCAW's long-term solution to the growing problems of catastrophes in the continuous process industry. In the meantime, we are attempting to act both on the collective bargaining and legislative front on intermediate solutions. Our current oil policy program for 1990 calls for a full-time position of operator-monitor who shall be trained in the tasks generally associated with monitoring for environmental contamination including toxic substances releases, air quality, ground water contamination and water quality.

A further clause in that same policy stipulates that, in the event an employee is killed as result of an injury on the job, the employee's designated beneficiary shall receive the sum of $1,000,000. But we should not have to bargain for the right to work safely and without fear of our lives.

We also support as an interim measure Chairman Lantos' draft legislation that would expand the categories of criminal offenses by making the serious injury of a worker and reckless endangerment of workers subject to criminal sanctions. We agree that criminal sanctions should be increased and support the fine of $500,000 and a twenty year jail term for violations.

Again, the final answer is the Right-to-Act which will automatically mean a meaningful safety process standard. Everything else is essentially a band-aid solution.

FOOTNOTES

1. Statement of Sonny Nghyen, 10-28-89.
2. Statement of B. T. Walker, 10-25-89.
3. Statement of Steve Harris, 10-30-89.
4. Statement of Charlie Brown, 10-27-89.
5. Statement of John Dixon, 10-26-89.
6. Statement of B. T. Walker, 10-25-89.
7. Union-Management Monthly Meeting Minutes.
8. OSHA August, 1989 Investigation.
9. August 8, 1989 Union-Management Meeting Minutes.
10. Union-Management Monthly Meeting Minutes.

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ONE HUNDRED LARGEST LOSSES
A THIRTY-YEAR REVIEW OF PROPERTY DAMAGE LOSSES IN THE HYDROCARBON - CHEMICAL INDUSTRIES

EIGHTH EDITION

May, 1985

Losses included in the Eighth Edition of this report represent about $3.4 billion in property damage when trended to January, 1985. Individual losses vary from $10 million to $233 million, the average being $34 million. During the first ten year period of the study (1955-64), there were fifteen incidents with an average trended loss of $25 million. The average size of the 53 losses occurring during the last ten year period of the study (1975-84) has increased to $37 million.

Increased losses are partly attributable to the scale-up in size of process units, equipment, storage tanks, transmission lines, etc. Ethylene plant and refinery alkylation unit throughputs have increased by factors as much as ten. Failure of the inlet line to the main fractionation tower of a 250,000 barrel per day crude unit can dump as much as 7000 gpm of hot crude oil into the unit. Tank capacities have increased from 100,000 barrels to 1,500,000 barrels while the cost of crude oils, petrochemical feedstocks, and finished products have also risen.

- Ten fires and explosions were added to this list in 1984, including the most destructive refinery fire in 30 years, the largest natural gas processing plant fire, and a devastating liquified natural gas terminal-tank farm BLEVE and fire. These three incidents caused approximately $180 million property damage. The Mexico City LPG Incident No. 100 received widespread news media coverage until it was eclipsed by the Bhopal, India gas release disaster a few weeks later.

A vapor cloud was the initiating mechanism in 36% of the losses. The most devastating losses in the survey involved the delayed ignition of unconfined vapor clouds with destructive overpressures resulting from rapid deflagration or detonation. The average trended property damage loss was $44 million in this group; approximately $9 million higher than the average for the 100 losses.

- Blast waves from unconfined vapor cloud explosions have frequently disrupted steam and electric utilities at hydrocarbon processing plants. In ten of the vapor cloud losses, all fire pumps dependent on steam or electricity became inoperative as a result of explosions. These examples lead to the conclusion that fire protection system designers should specify diesel engine driven fire pumps and they should be well separated from process areas in which large vapor releases might occur.

In several of the vapor cloud explosions, windowless control buildings of blast resistant construction survived the overpressures with minor damage, while nearby buildings of hollow concrete block or lightweight noncombustible construction were demolished. The frequency of vapor cloud explosions suggest that more widespread use of fixed combustible gas detection systems throughout process areas and tank farms might provide earlier warning of gas leaks and hydrocarbon spills.

Incident No. 88 which occurred at a Venezuelan electric generating station is included on this list of hydrocarbon-chemical industry losses. It involved a fire and subsequent violent boil-over of a large tank thought to contain No. 6 fuel oil. It is of particular interest since previously there had been no boil-over experience with fuel oils.

Incident Nos. 90 and 98 are amazingly similar. Both were initiated by failures of slurry recycle lines; one in a fluid catalytic cracking unit, the other in a fluid coking unit. In each fire there was a large release of hot oils and gases near grade level. These promptly ignited and the ensuing intense fires caused damage to pipe racks and process structures. Six hundred and nine hundred psi steam lines ruptured in each fire. This increased the vaporization of liquid hydrocarbons possibly intensifying the fires. High noise levels produced by escaping steam made voice communication impossible and affected fire fighting efficiency.

Additional copies of this publication are available through M&MPC Managers.

Fred A. Manuele
Managing Director

65X

WILLIAM G. GARRISON, P.E.
SENIOR FIRE PROTECTION CONSULTANT
M&M PROTECTION CONSULTANTS

Note: All losses are in U.S. dollars

	DATE	LOCATION	LOSS AT TIME OF OCCURRENCE	LOSS TRENDED TO 1/1/85
1.	4/19/56	Marcus Hook, PA	3,000,000	12,510,000

An explosion in a nitrogen oxide separation unit destroyed the unit and the adjoining hydrogen purification unit. The one-story masonry control building was also destroyed. The ensuing fire involved ethylene, the refrigerant for the separation unit. Deluge nozzles set up by the plant fire brigade kept equipment cool until all of the ethylene had been consumed. Cause of this loss has never been determined.

2.	1/8/57	Montreal East, Canada	3,164,000	12,213,000

The gage failure on a 5,000 barrel sphere was discovered the day previous to the fire, and a series of errors in calculating liquid level in the tank over the next 24 hours resulted in overflowing through the vents of the sphere and into the diked area containing it and two larger butane spheres. Since outside temperature was 20°F and the boiling point of the butane was 30°F, a large quantity of liquid butane collected in the diked area. A large vapor cloud also developed and ignited, probably at a service station 600 feet away. The fire flashed back to the diked area.

About 30 minutes later, one sphere developed two small splits on top, and ½ hour after that the other two ruptured with great violence, throwing large missiles over a wide area. Flames from the rapid burning of about 20,000 barrels of butane reached over a mile in height. Missiles struck many tanks, of which three ruptured and damaged pipe lines. A 30-ft long spherical-tank column support traveled 1,175 feet and struck a power substation, darkening most of the city of Montreal. Several buildings were set afire.

A 38,000-bbl tank containing 9,000 barrels of hot bunker fuel and a 30,000-bbl tank about half full of JP-4 fuel were pierced by missiles. Internal explosions blew the roofs off both tanks. An 80,000-bbl tank in a neighboring refinery containing 10,000 barrels of crude oil was also struck by a missile, which caused a violent explosion in the tank, blowing off the roof. The tanks were 150 to 500 feet from the butane spheres.

3.	1/29/57	Whiting, IN	4,900,000	18,914,000

Three interconnected large pressure tanks in which propane from a sulfuric acid alkylation unit depropanizer was stored were destroyed by a violent explosion that occurred when a valve was opened to relieve pressure above the stored liquid propane. A high concentration of oxygen was probably an important factor responsible for the explosion.

4.	4/15/57	Nitro, WV	5,000,000	19,300,000

During the batch chlorination step in the manufacture of methyl parathion, an explosion blew the cover off the glass-lined chlorinator through the roof of the three-story building, drove the vessel down into the floor and released flammable gases which ignited. Damage was extensive within a 1,000-foot radius.

	DATE	LOCATION	LOSS AT TIME OF OCCURRENCE	LOSS TRENDED TO 1/1/85
5.	5/22/58	Signal Hill, CA	10,000,000	37,600

A tank containing 50,000 barrels of hot oil feedstock ro over, causing oil to flow over 27 of the 33 acres of a 20,000 b per day refinery. The burning wave of oil swept through ap imately 70% of the process area and involved 73% of the ery's tankage. Seventeen of 32 buildings were destroye damaged. Off-premises buildings and automobiles accou for $3,500,000 of the $10,000,000 property damage.

6.	11/8/59	Tanker, Galena Park, TX	6,000,000	22,200

Leaking gasoline from a cargo hose and from an adjoining which had previously been involved in a collision spilled o water and was ignited down channel. The gasoline burned to the tanker and barges.

7.	10/4/60	Kingsport, TN	9,500,000	34,77

Nitrobenzene was being produced in a process using su acid as a scavenger for the water developed in the proces upset in the remotely controlled process allowed a single mixture of benzene, mononitrobenzene, nitric acid and to develop. The mixture, in the amount of 14,500 po equaled six tons of TNT. Detonation took place within the essing equipment.

8.	9/26/61	Tanker, Morehead City, NC	8,000,000	29,29

Fuel spilled on the bay, became ignited and involved th foot long tanker which then exploded. The fire burned itse five days later.

9.	4/17/62	Brandenburg, KY	5,000,000	18,00

Overpressure of a process reactor in an ethanolamine pr tion unit forced a small amount of ammonia from the r through the ethylene oxide supply line to the ethylene tank. The ammonia, acting as a catalyst, initiated an exoth polymerization reaction in the 6,500 gallon tank. When th of reaction reached runaway proportions or reached the taneous decomposition temperature of ethylene oxid tank ruptured violently. Blast damage was severe.

10.	4/27/62	Marietta, OH	5,000,000	18,0

A benzene recycle pump in a phenol production unit b plugged with residue. While employees were attempt clear the plug with steam, pressure built up within a s column causing a batch relief valve to operate, disch benzene vapors which became ignited. Flying debris r resultant explosion ruptured piping, releasing 40,000 gall various flammable liquids. These in turn were ignited

11.	4/3/63	Plaquemine, LA	4,000,000	14,3

The true cause of this ethylene plant explosion and fir known. It is believed to have been the failure of a top sig on a separator on the feed to the dehydrators ahead

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DATE	LOCATION	TIME OF OCCURRENCE	TRENDED TO 1/1/85

methane distillation column. It operated at 500-600 psi and 60°F to 80°F. Thirty seconds after escaping gas was heard, there was a minor explosion which was followed in two or three minutes by a second explosion.

A severe fire ensued, which completely destroyed the production unit. An estimated 250,000 gallons of ethylene fed the fire.

12. 1/12/64 Attleboro, MA 5,000,000 17,700,000

The illuminator port glass in a polyvinyl chloride reactor was replaced but was not pressure tested before the reactor was recharged. Upon recharging, operators observed a small leak. Upon tightening the clamp ring bolts, the leak intensified. About five to ten minutes later, a major explosion occurred causing extensive damage to the reactor building and adjoining buildings. Piping to all 20 reactors and other process equipment was broken, releasing 150,000 pounds of vinyl chloride which ignited. Loss of boiler steam generation in subfreezing weather resulted in freeze-ups of other plant buildings.

13. 6/16/64 Niigata, Japan 22,000,000 77,880,000

An earthquake of magnitude 7.7 resulted in two major fires in this 47,000 barrel per day refinery. The first fire, which started at the time of the quake, was the result of oil spillage over the sides of a floating roof tank. Friction sparks from the floating roof smashing against the sides of the tank caused ignition of the oil in the tank. Apparently the tank also developed leaks which allowed more oil to spill. Later, when the seismic wave engulfed the area, the oil was spread by flood waters. However, the oil did not ignite for about four hours. Six hours after the initial quake, an explosion occurred in another section of the refinery 1,200 feet from the original tank fire. This explosion also spread burning oil over the water. Although these two fires spread to within 350 feet of each other, they did not merge. Ninety-seven tanks containing 1,100,000 barrels of crude and product were destroyed. Damage to operating units was extensive.

14. 7/13/65 Lake Charles, LA 4,000,000 14,000,000

Cryogenic liquids discharged from a relief valve in an ethylene plant to an 8" carbon steel flare header caused the header to fail. Ignition of the rapidly forming vapor cloud occurred almost immediately. Fire damage was extensive.

15. 8/25/65 Louisville, KY 10,000,000 35,000,000

The manufacturing process involves the three-step conversion of acetylene gas to monovinylacetylene (MVA), then to chlorobutadiene (CD), and by polymerization, to neoprene. Mechanical failure in a compressor circulating gaseous MVA in the reactor system caused localized heating in metal moving parts to such an extent that the extremely high temperature initiated decomposition. A series of subsequent explosions was caused by fragments from the first explosion, flame impingement and transmission through pipelines.

16. 1/4/66 Feyzin (Lyons), France 18,100,000 61,359,000

Improper sampling procedures on a 48 foot diameter 12,580 barrel butane sphere which was 3/4 full resulted in the uncontrolled release of liquid butane through a 2-inch connection. Ignition was believed to have been from a passing vehicle at a distance of 300 feet. Fire at the relief valves and at the base of the sphere burned about an hour before the tank failed massively. Pieces of steel up to 100 tons traveled about 1/4 mile. One fragment landed on a pipeway, cutting 40 lines. Another piece cut the legs out from under an adjoining sphere causing it to topple and break its 8-inch connecting line. Hot spots developed on 3 nearby butane tanks, and they ruptured.

DATE	LOCATION	TIME OF OCCURRENCE	TRENDED TO 1/1/85

17. 1/19/66 Raunheim, Germany 6,960,000 23,394,000

Explosion in an ethylene plant is believed to have originated due to brittle fracture of a carbon steel compressor suction line. 600 pounds of methane were released. Buildings within 40 yards were damaged, and the ethylene unit was destroyed.

18. 8/8/67 Lake Charles, LA 17,300,000 56,225,00

An estimated 17,500 gallons of isobutane released by failure of a valve on an underground pipeline was dispersed over an area of 300 x 800 feet before igniting. The resulting explosion and fire destroyed or heavily damaged two alkylation units, a delayed coking unit, a thermal cracker and a catalytic hydroformin unit. Two spherical tanks failed and numerous cone-roof tanks were involved.

19. 12/19/67 El Segundo, CA 3,700,000 12,025,00

About 846,000 barrels of cracked bunker viscosity fuel oil were stored in a 780' x 460' oval-shaped reservoir 19 to 22 feet deep. A roof of built-up covering on wood planking covered the reservoir. Although protected by lightning rods, the 1MM barrel capacity basin was ignited by lightning. The roof was quickly consumed and the oil burned for 3 days before coking over with a porous crust. This was followed by 9 days of fire consisting of glowing coals. Several unsuccessful attempts were made to extinguish the 7 ½-acre fire using 35 high and low expansion foam units assembled from industrial and governmental agencies. Finally, 30,000 cubic yards of sand were spread over the crusted coke which eventually thickened to depths of about 6 feet. The trended loss estimate reflects oil price increases since 1967.

20. 1/20/68 Pernis, The Netherlands 28,000,000 87,080,00

Frothing occurred when hot oil and water emulsion in a refinery slop tank reacted with volatile portions of hydrocarbonic sludge causing a violent vapor release and boil-over. The ensuing fire involved 30 acres of the approximately 200-acre refinery, the second largest in the world. Two wax crackers, a naphtha cracker, a sulfur plant and 80 tanks were destroyed or damaged. Much of the property involved in this loss was idle or obsolete. Only premises damage was reported as far as 9 ½ miles.

21. 1/14/69 Lake Charles, LA 4,510,000 13,395,0

Mechanical failure of a batch alcohol reactor containing about 2,000 gallons of kerosene and aluminum triethyl under high pressure caused a flash fire and localized blast damage including destruction of the process control room. The reactor head landed in a pipe rack 80' distant but did not rupture the lines.

22. 3/6/69 Puerto La Cruz, VZ 4,652,000 13,816,0

A leaking valve or piping in a refinery crude unit allowed hydrocarbon vapors to drift to a heater where they were ignited. The ensuing fire involved a heater-treater vessel which ultimately ruptured. A number of explosions caused minor damage at distances up to 6 miles. Twenty-four tanks, eight buildings, a visbreaker and the crude-vacuum units were destroyed.

23. 8/12/69 Flemington, NJ 4,161,000 12,358,0

An employee working in a PVC Reactor building slipped and inadvertently grabbed the handle on a quarter-turn dump valve for one of the 15 reactors, shearing off the stem. Attempts to stop the flow of vinyl chloride monomer from the 3" pipe were unsuccessful. The building was evacuated as gas flowed along the ground to a bulk storage tank area where a tank truck was being loaded with powdered PVC resin through a 10" pla

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DATE	LOCATION	TIME OF OCCURRENCE	LOSS TRENDED TO 1/1/85

feed line. Ignition of the gas probably was by static electricity from the plastic line. The explosion caused heavy structural damage to the two-story steel-framed reactor building which had concrete floors and roof and masonry block and asbestos-cement walls. Because of VCM piping damage and lack of accessible shut-off valves, the ensuing fire burned for six days until the VCM system depressured.

24. 10/1/69 Escombreras, Spain 12,378,000 36,763,000

Propane vapors released from bullets drifted 600 feet and were ignited by cooling tower motors. Further details not available.

25. 10/23/69 Texas City, TX 8,000,000 23,280,000

The 100 foot high refining column in the butadiene unit of the billion pound per year olefins complex disintegrated with explosive ignition of 540 gallons of liquid hold-up. Sections of metal plate were spread uniformly over a radius of 1,500 feet. One section weighing about 800 pounds traveled 3,000 feet. All five towers in the butadiene section were either felled or heavily damaged.

26. 2/5/70 Hammond, IN 5,500,000 15,235,000

Three separate fires in a fully sprinklered 300' x 420' fire resistive TBA Warehouse were attributed to arsonists apparently to conceal inventory shortages. There was an 18-minute delay in notifying the fire department. When fire fighters arrived, flames were coming through the precast concrete roof and had involved all areas of the structure, which contained petroleum products and tires.

27. 8/3/70 Corpus Christi, TX 7,400,000 20,498,000

Hurricane "Celia" with winds of 140 to 160 MPH and 6 to 8 inches of rain struck this 85,000 BPCD refinery. The main structure of a 19-year old Thermofor Catalytic cracking unit was toppled. About 30 tanks were damaged. Off-premises power was disrupted for several weeks, as was city water which provides makeup to the service and fire water pumps.

28. 9/17/70 Beaumont, TX 6,500,000 18,005,000

Lightning struck a 60 x 40 foot 15,000 barrel slop oil tank with resulting failure of the floor-shell seam. 11,000 barrels of oil were released, spreading to involve 16 nearby undiked tanks, pipe right-of-ways and a cooling tower. The fire burned for 12 hours before extinguishment.

29. 12/5/70 Linden, NJ 27,173,000 75,269,000

A 7" thick reactor of a wide-range hydrocracking unit being operated by computer at 2500 psi failed explosively due to localized overheating. The blast caused widespread damage over a 300-yard radius including an adjoining cat cracker and crude proe still where the roof of the control building collapsed. Other units were safely shut down from a blast-resistant control building which sustained minor damage. There were over 7,000 claims of property damage from outside of the refinery.

30. 2/26/71 Longview, TX [illegible]70,000 14,742,000

A drain fitting on piping between the booster and 40,000 psi high pressure compressors broke allowing ethylene to accumulate. Automatic equipment promptly detected the hazardous vapor and operated the automatic high-density water-spray system designed to wash ethylene from the atmosphere. Apparently the leak was too large for the spray system to handle. Ethylene entered the exhaust system of an engine which was driving one of the compressors causing the muffler to detonate, thus igniting the rest of the vapors.

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DATE	LOCATION	TIME OF OCCURRENCE	LOSS TRENDED TO 1/1 85

The explosions, which were felt six miles away, destroye buildings and caused lesser damage throughout the poly ene plant and to the surrounding properties.

31. 4/21/71 Covington, GA 5,000,000 13,000

Sparks from a short circuit in the extruder/roll storage were the cause of this fire which destroyed most of this po rene foaming and forming plant. Initial attempts to extin the fire with extinguishers and 1 ½-inch fog lines were u cessful. Fire detectors actuated a high expansion foam un it was unable to keep up with the rapid spread of fire. Ope doors, which were arranged to close automatically, failed so, and the fire spread to the thermoforming room whic no fixed protection. Two other fire walls failed and fire co nicated to the reclaim room and the finished product rack age warehouse. A high-ex unit in the warehouse also wa fective due to the extremely rapid spread of fire.

Public fire departments responded but were able to sav 20% of the 150,000 sq ft plant, a warehouse cutoff from th complex by a masonry fire wall having no openings. Th ence of residual isopentane vapors escaping from the r styrene caused the rapid development and spread of thi

32. 2/29/72 Delaware City, DE 6,002,000 15,0

A transfer line failure 250 ft. above grade in a fluid cok dumped hot oil. Difficulty in blocking in the line and s the flow resulted in damage to the coking drum structu

33. 3/30/72 Rio de Janeiro, Brazil 4,800,000 12,

The LPG storage area of this 256,000 barrel per day ref cluded five 10,000 barrel spheres and sixteen bullets. Pr consisted of fixed cooling water systems on the sph monitor nozzles and hydrants for the horizontal tanks

Water was being drained from one of the spheres thr inch pipe with a 2-inch gate valve pointing down at a h feet from ground level. The operator left with the dr fully open. When he returned, liquid LPG was pouring drain at 156 psi, and he was unable to reach the valve b the cold zone and because the jet had dug a large h crushed stone bed covering the ground. A very la cloud developed spreading beyond the refinery bo ignited and flashed back to the sphere. Flaming LPG drain hitting the ground was deflected back against part of the tank. Cooling water was applied to all tan to 20 minutes, the relief valve opened at 239 psi disch to atmosphere. It promptly ignited.

Despite the cooling water and open safety valve, exploded, causing a tremendous blast wave and le crater where the sphere had been. Nearby spheres the bullets were thrown from their supports. Line ken, so that the fire spread throughout the storage a ing the explosion, the fire developed beyond any p trol, causing the explosion of three more horizont finally burning itself out.

All 21 tanks were destroyed. Many refinery buildin ties sustained blast damage. Two fire trucks were d another four were damaged.

34. 8/4/72 Trieste, Italy 10,620,000

Terrorists placed dynamite charges at the 40-in lines of four 250-ft. diameter 300,000 barrel floati storage tanks. Two tanks were totally destroyed badly damaged and three others received less se When the bombs exploded, two tanks became were pit fires which spread to the roof seals. Once boil-overs occurred spreading oil over the 9-foot

	DATE	LOCATION	TIME OF OCCURRENCE	TRENDED TO 1/1/85

dikes. Burning oil flowed to the terminal control house 1,600-2,000 feet away. All tanks were protected by rim-foam systems.

Note: The trended loss estimate reflects crude price increases since August, 1972.

35. 8/14/72 Billings, MT 5,000,000 12,500,000

An alkylation unit was being started up after shutdown because of an electrical outage. When adequate circulation could not be maintained in a deisobutanizer heater circuit, it was decided to clean the strainer. Workmen had depressurized the pipe and removed all but three of the flange bolts when a pressure release blew a black material from the flange, followed by butane vapors. These vapors were carried to a furnace 100 feet away, where they ignited, flashing back to the flange.

The ensuing fire exposed a fractionation tower and horizontal receiver drums. These drums exploded, rupturing pipelines, which added more fuel. The explosions and heat caused loss of insulation from the 8-foot-by-122-foot fractionator tower, causing it to weaken and fall across two major pipe lanes, breaking piping — which added more fuel to the fire. Extinguishment, achieved basically by isolating the fuel sources, took 2½ hours.

The fault was traced to a 10-inch valve that had been prevented from closing the last 3/4-inch by a fine powder of carbon and iron oxide. When the flange was opened this powder blew out, allowing liquid butane to be released.

36. 2/10/73 Staten Island, NY 14,000,000 33,740,000

A 600,000 barrel reinforced and prestressed concrete LNG tank had been out of service for a year after instrument readings indicated a leak in the liner. The inside of the tank was insulated with polyurethane and had a liquid and vapor tight laminated liner consisting of Mylar, aluminum and Dacron. The 61' x 258' tank had been purged with nitrogen and air before repairs commenced and was regularly tested as work progressed on repairs. Eleven months after the initial purge, fire broke out in the tank from an unknown ignition source. The first material ignited was either the liner or a small quantity of natural gas that escaped into the tank from the insulation or the berm around the tank. The polyurethane foam ignited and generated sufficient heated gases and pressure to lift the concrete dome which then fell back into the tank.

37. 7/8/73 Tokuyama, Japan 14,800,000 35,668,000

Inadvertent interruption of instrument air in an ethylene plant caused an accumulation of hydrogen in an acetylene hydrogenation column. An exothermic reaction occurred because ethylene hydrogenated to ethane, consequently decomposing ethane to methane, carbon and hydrogen. Leakage resulted in fire and explosion.

38. 8/24/73 St. Croix, VI 10,500,000 25,305,000

A crack developed in a weld of a high pressure transfer line between the high and low pressure separators downstream of the reactor of a new hydrodesulfurizer. The unit was starting up at the time of the loss. The high pressure separator was operating at 850 psi and about 150°F. With failure of the schedule 80 line, hydrogen and liquid hydrocarbons were released. These were ignited from an unknown source and burned for about three hours. During that period, the prevailing winds carried the flame along 125' of pipe rack. Fireproofing elevated above the rack on one-hour rated fireproofed supports failed within 20 to 35 minutes disrupting the aerial coolers on the pipe rack. The system unloaded through the break, since there was no way of shutting off the flow. Fire control and extinguishment was achieved by 20 hose and deluge streams and a fire flow of about 7000 gpm.

	DATE	LOCATION	TIME OF OCCURRENCE	TRENDED TO 1/1/85

39. 10/8/73 Goi, Japan 7,000,000 16,870,000

Following an electrical failure, an operator attempted to blow down a polypropylene polymerization reactor full of solvents. Apparently through error, he opened a wrong valve, dumping a mixture of propylene and hexane into an adjacent reactor which was open for repairs. The resulting vapor cloud is believed to have been ignited by a relay on an extruder 150 feet from the point of release.

40. 6/1/74 Flixborough, England 48,000,000 to 180,000,000 97,920,000 to 367,200,000

Massive failure of a 20-inch diameter bypass assembly around cyclohexane oxidation reactor caused the release of cyclohexane. The huge vapor cloud expanded into other areas of the plant, which produced caprolactam, and was ignited. The pressure waves from the explosion and the ensuing fire, which involved an estimated 433,000 gallons of flammable liquids, destroyed much of the plant. Off-premises damage extended eight miles and included 2,488 homes, shops and factories.

Note: Loss estimates vary greatly. Direct damage to the plant estimated at $48,000,000, or $180,000,000 total reconstruction cost of plant and surrounding property.

41. 11/29/74 Beaumont, TX 16,000,000 32,640,000

Vapor cloud explosion and ensuing fires resulted from a spill of 16,800 gallons of in-process hydrocarbon liquid and gases discharging through a broken expansion joint in the suction line of a pump. The explosion created blast waves that broke numerous process lines, resulting in multiple fires in the isoprene synthesis plant and adjoining tank farm. A major explosion occurred when a 20,000 gallon isoprene storage tank ruptured approximately 15 minutes after the first explosion. About 1½ hours later, a 12' diameter x 200' high distillation column collapsed into the isoprene structure causing a flare-up and further involvement of thousands of gallons of hydrocarbons.

42. 1/31/75 Tanker, Marcus Hook, PA 7,837,000 14,263,000

A 660-foot chemical carrier started a U-turn, lost control and rammed a 745-foot tanker which was unloading light Arabian crude at a refinery dock. The tanker, still containing 300,000 barrels, immediately exploded. The chemical ship, with its 11,000 tons of phenol and six other chemicals, also caught fire but was able to back away and extinguish her fires. A 2,000 foot pier and a 100 x 300 foot warehouse on the pier were engulfed in flame. After 12 hours, the tanker stern port tank exploded, releasing burning oil 2,000 yards upstream and 500 feet into the river. The fire was extinguished 30 hours later.

43. 2/10/75 Antwerp, Belgium 28,325,000 51,552,000

A 12,000-gallon high-pressure ethylene leak due to fatigue failure of a vent connection on the suction side of a compressor in a low density polyethylene plant caused widespread blast and fire damage.

44. 3/16/75 Avon, CA 10,374,000 18,881,000

After observing high liquid level on the fresh feed drum of a large fluid coking unit, operators increased the pumpout rate creating a vacuum and resulting in an implosion of the drum. Spilled hot oil ignited and burned for 11½ hours. Loss of instrumentation was responsible for a second simultaneous fire on the 6th thru 8th level of the burner-auxiliary-air-heater gas structure. The two fires originated 200 feet apart and did not join one another. Hot fuel gases were carried 100 feet further to the CO boiler where significant damage occurred.

	DATE	LOCATION	LOSS AT TIME OF OCCURRENCE	LOSS TRENDED TO 1/1/85
45.	8/17/75	Philadelphia, PA	13,000,000	23,660,000

Crude oil was being off-loaded from a tanker at a refinery to a 60,000 barrel converted internal floating roof tank. Evidence indicates that while the tank had not actually overflowed at the time of the initial fire and explosion, it had been filled beyond the designed maximum fill height, and this caused rapid emission of volatile vapors from the tank vents. These traveled to a boiler house and its stack. The hot surface of an uninsulated high temperature and high pressure steam pipe ignited the accumulated vapors. This caused a momentary overpressure of the stack that damaged it extensively. Flashback to the crude tank was immediate. Piping failures in the tank manifold released more crude oil outside of the tank dike.

Within a brief time, an explosion occurred in the crude tank spilling additional oil into the dike. An adjoining tank containing No. 6 fuel oil became involved in fire and several pipelines in the dike failed. The fire burned for nine days before it was finally extinguished. During that time, it involved four tanks, the refinery administration building and other less important facilities.

Fire fighting was by 200 municipal fire fighters responding to eleven alarms and by several refinery fire departments. Three foam trucks and two pumpers were destroyed when fire flashed over oil-covered water.

46.	11/7/75	Beek, The Netherlands	22,892,000	41,663,000

Cold brittle fracture of a 1.57 inch connection of a feed drum to its safety valve in an olefins unit naphtha cracker undergoing start-up caused the escape of a mist of an estimated 3-5 tons of hydrocarbons, mostly propylene. The subsequent explosion involved nearby storage tanks, buildings and other parts of the plant as well as 2,310 cases of off-premises damage.

47.	5/24/76	Geismar, LA	8,975,000	15,437,000

Explosion involving a large polyglycol ether reactor with the release of unreacted ethylene oxide, propylene oxide, glycol and glycerine. Cause of the failure is believed to be the loss of agitation and/or failure of a temperature transmitter and/or the introduction of insufficient catalyst to the reactor. The explosion threw the reactor head 1,400 feet. Fragments ruptured a 320,000 gallon polyglycol ether tank and broke the sprinkler system riser. The ensuing fires in the reactor and tank farm areas were extinguished by the plant fire brigade within 1½ hours.

48.	7/18/76	Big Spring, TX	6,800,000	11,696,000

Fuel oils being blended by use of air ignited resulting in a tank explosion and fire. Numerous nearby tanks became involved as did several cooling towers and an HF alkylation unit.

49.	8/30/76	Plaquemine, LA	12,000,000	20,640,000

A leak between the shell and tubes of the reactor heat exchanger in an ethylene oxide plant allowed air to enter the heat transfer system. The top blew off of the transfer oil surge tank. The ensuing fire lasted four hours, causing extensive damage to six reactors and associated equipment.

50.	12/17/76	Tanker, Los Angeles, CA	12,000,000	20,640,000

Having off-loaded 507,000 barrels of light Indonesian crude, a 71,000 DWT tanker was loading bunker "C" oil. The ship was not equipped with a vapor recovery system and its cargo tanks were not inerted. The explosion, which is believed to have been caused by sparks from a nearby pump during ballasting and bunkering operations, threw the ship's bridge and center section onto the concrete dock, leaving the shattered stern and bow sections afloat.

51.	4/3/77	Umm Said, Qatar	76,350,000	124,451,0

A 260,000 bbl tank containing about 236,000 bbls of refrigerated propane at minus 45°F failed massively. The wave of liquid propane swept over the dikes and inundated the 51,000-barrel day process area before igniting. An adjoining tank containing 125,000 barrels of refrigerated butane also was destroyed as was most of the process area. The fire burned out of control for 3 days and was extinguished after eight days. Reportedly the failed weld which failed had been repaired following a weld failure incident one year earlier in which 14,000 barrels of propane were released. In the first incident, a massive vapor cloud traveled 500 feet but did not ignite.

52.	5/11/77	Abqaiq, Saudi Arabia	54,500,000	88,835,

Failure of a 30-inch crude oil pipeline, buried 8 feet and operating under 925 psi, resulted in a fire which destroyed three 60-barrel spheroids, pumping units and other equipment. Over 300 valves had to be closed to shut in the gas field and eliminate the fuel supply to the fire. Ignition was by motor vehicles.

53.	6/4/77	Abqaiq, Saudi Arabia	10,600,000	17,273,

An above-ground fuel gas line operating at 500 psi failed. A 300 x 600 ft resulting vapor cloud was ignited by a motor vehicle. The loss occurred about 400-500 yards from the 5/11/77 loss. Other details or data as to the extent of damage is not available.

54.	7/8/77	Near Fairbanks, AK	39,610,000	64,564,0

Accidental starting of a pipeline pump while a strainer cover plate on the 26-inch pump suction line was being removed allowed crude oil at 250 psi to be released. Ignition probably from hot main turbines. The fire was mostly confined to the pump house and extinguished in about 3 hours.

55.	9/24/77	Romeoville, IL	8,000,000	13,040

Lightning struck a 190-foot diameter cone roof tank containing diesel fuel. Roof fragments thrown 240 feet struck a 100-foot diameter covered floating roof gasoline tank. A 180-foot floating roof gasoline tank at 80 feet distance was also struck by debris. The entire surfaces of the cone and internal floating roof tanks ignited immediately. The rim fire on the floating roof resulted in the roof sinking after about two hours. The two largest tanks were full; the smallest about half full. The two larger tanks lost their contents were destroyed.

Extinguishment was by top-side and sub-surface foam application after about 46 hours. The refinery's five stationary pumps supplied up to 10,000 gpm of the estimated 14,000 gpm pumped during the fire. Thirty-five municipal and industrial fire departments, including a 12,000 gpm fire boat, assisted the refinery fire department. About 22,000 gallons of foam concentrate were consumed.

56.	12/8/77	Brindisi, Italy	28,280,000	46,096

A major gas release in the cold section of a 250,000 metric ton per year ethylene unit has since ignited and caused severe explosion and fire damage. Two nearby ethylene units were also damaged. The control building had brick panel walls within a reinforced concrete frame. Blast overpressures blew out the wall panels and destroyed the controls. Water applied by fire trucks could not be carried out by the sewers, resulting in an

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	DATE	LOCATION	TIME OF OCCURRENCE	TRENDED TO 1/1/85

backup of floating burning liquid and heavy hydrocarbons throughout the process area. The fires were controlled in 8 hours and extinguished three days later.

57. 4/13/78 Calumet City, IL 12,575,000 18,988,000

A skid-mounted, three-reactor continuous styrene polymerization unit was involved in fire of unknown cause. 30 to 40 mph winds spread the fire into an adjoining extrusion, blending and packaging building. One of two fire pumps failed to start. Fire overwhelmed sprinkler and deluge systems.

58. 4/15/78 Abqaiq, Saudi Arabia 53,700,000 81,087,000

A 22" gas transmission pipeline operating at 500 psig developed a leak due to internal corrosion. The leak expanded and the line parted releasing a vapor cloud near a large (405' x 435') gas processing plant. After about seven minutes ignition occurred from a flare located 1,500 feet downwind. The jet/whipping action of escaping gas threw a 22 foot section of pipe 400 feet where it struck the vapor space of one of two 10,000 barrel spheroids. A second vapor cloud formed and was ignited by the first fire. The detonation developed overpressures of 7.8 psi.

59. 5/30/78 Texas City, TX 55,000,000 83,050,000

Cause of this loss which started in a refinery alkylation unit tank farm is unknown. An unidentified failure led to the release of light hydrocarbons which spread to an ignition source. A rather intense fire followed in the tank farm. In less than 5 minutes, a 5,000 bbl sphere failed causing a tremendous fireball and sending pieces of the sphere throughout the plant. Within the next 20 minutes, five 1,000 bbl horizontal bullets, four 1,000 bbl vertical bullets, and one additional 5,000 bbl sphere failed from either missile damage or BLEVE's. Pieces of the tanks traveled in all directions, falling into a number of operating units and tank farms and starting more fires. Fragments also hit the fire water storage tank and electric fire pumps. Two diesel fire pumps remained serviceable.

60. 10/3/78 Denver, CO 21,927,000 33,110,000

Two weeks after the initial start-up of a new cat poly unit, a pipe from the stabilizer reboiler failed and released propane gas. The resulting vapor cloud probably was ignited by a heater 300 feet from the point of release. The blast and ensuing fire destroyed the cat poly unit and heavily damaged other refining units.

61. 10/30/78 Pitesti, Rumania 13,000,000 19,630,000

An overhead line from a tower to cooler fractured in the propylene fractionation section of a 40,000 b/d refinery. The mix of propane-propylene formed a massive vapor cloud which ignited, causing heavy blast and fire damage. Windows were broken 6 miles away.

62. 1/8/79 Bantry Bay, Ireland 20,566,000 28,381,000

An eleven-year-old 121,000 DWT tanker had completed unloading its first parcel of Arabian heavy crude at a deep-water port. No transfer operations between the ship and the jetty were in process when a small fire was noticed on deck. About ten minutes later fire spread all along the length of the ship and was observed on the sea at both sides of the ship. After a half hour, a massive explosion occurred. It is theorized that the initiating event of the disaster was the buckling of the ship's structure at or about deck level. This was immediately followed by explosions in the ballast tanks and the breaking of the ship's back. These events were produced by the conjunction of two separate factors, a seriously weakened hull due to inadequate main-

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tenance, and an excessive stress due to incorrect ballasting at the time of the disaster.

A fragment of the ship weighing 1,000 pounds was found at the base of a "Jumbo" crude oil tank, a distance of 1,800 feet from the ship. In addition to total loss of the ship, 1,130 feet of the concrete and steel jetty were damaged or destroyed.

63. 3/20/79 Linden, NJ 17,500,000 24,150,000

Failure of a dead-ended section of piping in a fluid catalytic cracking unit allowed the release of propane and butane. The developing vapor cloud had covered an area of approximately 1½ acres to a depth of 5-6 feet when ignited. Water sprays were ineffective in dispersing the vapors. An unused control room filled with vapors exploded. Flying bricks and debris severed small lines in the area releasing hydrocarbons.

64. 4/19/79 Port Neches, TX 32,000,000 44,160,000

An 854'-long 123,692 DWT tanker had off-loaded its cargo of crude oil and was taking on ballast water when struck by lightning. Two explosions followed, and the forward four crude tanks caught fire. High winds hampered fire-fighting efforts. Most of the damage was to the ship, but the refinery dock was extensively damaged. Further details not available.

65. 7/21/79 Texas City, TX 24,000,000 33,120,000

Liquid and gaseous hydrocarbons at 265 psi were released through failure of a 12" elbow in a line from a reflux accumulator serving the depropanizer overhead condensing system of a sulfuric acid alkylation unit. An estimated 4,000 to 5,000 gallons of liquids were discharged forming a large vapor cloud which traveled about 640 feet downwind to a FCC unit. Ignition was prompt, an estimated two minutes after the initial release. Both the alkylation and FCC unit, the CO boiler and control building sustained heavy structural damage. Four cooling towers and another control house were moderately damaged. Windows were broken 1½ miles away.

* 66. 7/28/79 Sauget, IL 7,640,000 10,543,000

A sub-station fire disrupted power at a chemical plant resulting in loss of agitation on a nitrodiphenylamine batch reactor. The batch stratified and decomposed. The reactor failed catastrophically with fragments severing the risers of three sprinkler systems protecting the area and rupturing nearby equipment containing flammable liquids. Most damage was concentrated in the reactor building.

67. 8/30/79 Good Hope, LA 10,500,000 14,490,000

A 514' general cargo ship heading down the Mississippi River veered out of control after its rudder stuck. At a refinery dock the freighter collided with a moored barge, which had just been loaded with 8,500 barrels of butane in six cylindrical pressure tanks, five of which ruptured. With release of the butane, fire engulfed the freighter, a tug boat and the dock. The barge drifted 3 miles downstream where it beached itself.

68. 9/1/79 Deer Park, TX 68,000,000 93,840,000

Nearly simultaneous explosions aboard a 70,000 DWT tanker off-loading vacuum distillate and in an 80,000 barrel ethanol tank at a refinery occurred during a severe electrical storm. The ethanol tank was ignited when a plate section of the exploded tanker flew through the air and struck the tank causing it to explode and burn.

The ship, tied up at the refinery dock, had discharged all but 30,000 barrels of its 128,000 barrel cargo when the explosion occurred. Unloading had been suspended minutes earlier.

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*Indicates New Loss Incidents Reported as of the 1985 Eighth Edition

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cause of a storm in the area. Explosions within the ship's holds spread 5,000 to 10,000 barrels of burning distillate on the water. This involved several nearby docks and four gasoline and crude oil barges.

The 120' diameter cone roof alcohol tank was about 1/3 full. It burned itself out in about 14 hours.

69. 11/15/79 Ponce, PR - 10,000,000 13,800,000

Failure of fractionation tower bottoms pump in a refinery platforming unit spilled hydrocarbons which ignited.

70. 12/11/79 Ponce, PR 15,000,000 20,700,000

The petrochemical complex which produced dicyclopentadiene, isoprene and piperylene had been shut down for 24 hours when a massive failure of a 13' diameter dimerizer vessel occurred. The 15 ton 1-1/8" thick steel head traveled 1,900 feet to an adjoining paraxylene plant, landing on a propane refrigeration system and setting fire to one of its three units. The blast released 25,000 gallons of hydrocarbon liquids from the dimerizer as well as 80,000 gallons from a nearby solvent tank. Ignition was immediate, and fire damage extended over a 170 x 170 foot area. Blast damage covered a considerably larger area of approximately 240 x 400 feet in size.

Damage to the isoprene plant is estimated at about $5 million with $10 million damage in the neighboring paraxylene plant.

71. 12/11/79 Geelong, Australia 11,236,000 15,506,000

An inboard roller bearing failure in a reduced crude pump operating at 670°F in a refinery crude unit initiated the fractures of the motor shaft and pump bearing bracket. The pump casing then broke open allowing release of hot oil which auto-ignited. Since the pump was only equipped with manually operated suction valves which could not be reached and the column had no isolation valve, the column emptied to the fire.

Access to the fire area was difficult and the table-drop above the pump allowed the rapid spread of fire over a wide area eventually engulfing the entire pump house. Secondary pipe and flange failures contributed further fuel to the fire. The pump house, concrete structures, and fin-fans were destroyed in the fire which was extinguished by 12 hand lines and 15 portable monitor nozzles after 14 hours.

72. 1/8/80 Avon, CA 15,000,000 18,600,000

Approximately fifty acts of vandalism to the control instruments of a refinery fluid coking unit occurred just prior to a labor strike. The company incurred an estimated $69,000,000 business interruption loss in addition to the property damage.

73. 1/20/80 Borger, TX 34,918,000 43,298,000

Few facts are known of this loss which apparently was initiated by a piping or vessel failure in a 16,800 barrel per day HF alkylation unit. Overpressures from a large vapor cloud explosion and the ensuing fire destroyed the alkylation unit and boiler plant and inflicted varying degrees of damage to the crude, FCC, gas converter, reformer and treating areas. The loss caused the entire refinery to be shut down.

74. 2/26/80 Brooks, AA 40,000,000 49,600,000

Rupture of a short section of buried 36" line between the flange and the valve body of a gate valve assembly was the source of an explosion and fire which destroyed much of a large natural gas transmission compressor station. At the time of the loss throughput was 3.2 billion cubic feet per day, or 80% of capacity. The initial blast produced a small crater, thus exposing a 48" turbine discharge line which fed into the 36" line. Force of the

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escaping 950 psi gas twisted the 36" mainline upward a wrapped it around the 34" pipe which also ruptured. Ignit was prompt, and the gas jet was directed toward compres buildings 250' distant and further where two out of three 20 horsepower turbine-driven compressors were destroyed the third seriously damaged. The control building and me house 600' from the fire source were destroyed. A build housing five reciprocating compressors was destroyed, as the auxiliary shop. Automatic control facilities operated imm diately after the first explosion to close all valves. Back-flow gas between the line break and the next downstream valve miles away burned off after about 3 hours.

Note: This was the largest property damage loss ever sustai by the natural gas pipeline industry - probably by a factor of

75. 5/17/80 Deer Park, TX 18,590,000 23,052,

Vibration from a pump bearing failure in a cumene section phenolacetone unit caused the pump seal to fail. The relea flammable liquids and vapors ignited. Process pipes oper adding fuel to the fire. Fin-fan coolers elevated above the rack collapsed, as did one process column.

76. 6/26/80 Sydney, Australia 17,977,000 22,291

An explosion in a hot oil furnace was followed by fire in a r ery butane deasphalting unit undergoing start-up following day shutdown.

77. 7/23/80 Seadrift, TX 11,800,000 14,63

A new ethylene oxide unit had been shut down due to a c lightning strike during a thunderstorm. While being brc back on stream, there was a decrease in RPM on the re compressor due to instrumentation problems. An ig within the first reactor produced a detonation in the bott the reactor and in the 36" feed lines. Heat transfer fluid rel by the explosion ignited and involved the reactor structur adjacent equipment. Damage was localized but severe.

78. 10/21/80 New Castle, DE 45,750,000 56,7

Improper maintenance procedures during cleaning plugged recycle cooling line on a 10,000 gallon capacity propylene reactor released hydrocarbons and polymer. In or removing only the motor operator of a 4" plug valve, the itself was accidentally removed. The release of 12,000 to pounds of monomer at 150 psi, produced a 250' x 450' cloud which ignited after about 1½ - 2 minutes. The vio plosion broke flammable liquid lines throughout the process trains and opened polymer lines in the finishin The blast also broke fire protection system risers, disrup fire water. Fires throughout the polymerization finishi storage silo areas burned for over 10 hours. Two of the process lines, the control building and the finishing are severely damaged. The compressor building, solvent re area, finished product warehouse and cooling tower wer erately damaged. Twenty-nine volunteer and paid fire ments and industrial fire brigades responded.

79. 12/31/80 Corpus Christi, TX 17,000,000 21,0

A 1"-deep long crack developed in the laminated reac hydrocracking unit while operating at 2500 psi. The unit ssured through the crack causing heavy fire damage a 4"-diameter percent. Further details not yet available.

80. 2/11/81 Chicago Heights, IL 14,000,000 15,

While preparing a batch for a reactor in a resins manuf plant, steam was applied to a catalyst in a weigh tank be

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sub-zero weather. An excess of heat caused the reaction to begin in the weigh tank. Since means for cooling the weigh tank were not available, the exothermic reaction caused the boil-over of the weigh tank's contents. A vapor cloud rapidly filled the one-story noncombustible building.

Even though emergency shutdown procedures were immediately initiated, there was ignition of the vapors. The explosion disabled sprinkler protection. The ensuing fire, which was fought by public fire departments using relay pumping to supply monitor nozzles, destroyed the 7,000 square foot resins reactor area and an adjoining 6,000 square foot warehouse.

81. 8/20/81 Shuaiba, Kuwait 100,000,000 111,000,000

The cause of this refinery tank farm fire which destroyed eight tanks and damaged several others has not been disclosed. It appears to have originated at a pump manifold within the common dike serving six 160,000 barrel floating roof tanks containing petrochemical grade naphtha. Naphtha was being pumped into one of the tanks when the initial explosion and fire occurred.

About one-half hour into the fire, the seal of the first tank caught fire. This was followed rapidly by two others. These spread progressively, eventually involving five of the six tanks in the group. The sixth tank was empty and sustained severe damage.

A strong fire fighting attack was initially made by the refinery fire brigade, later assisted by nearby industrial fire brigades, military and public fire departments. As many as 75 pieces of mobile fire fighting equipment were used to apply up to 11,000 US gpm of water and foam solution during the fire which lasted five days and twenty hours.

In spite of heavy protective water streams, a strong wind and radiated heat caused the fire to spread into an adjoining row of four 72,000 bbl floating roof tanks containing intermediate products and to a fixed roof 32,000 bbl slop tank. This took place 64 to 103 hours after the fire began.

Wind-driven flames caused the collapse of a heavily loaded unprotected steel pipe rack located between the two rows of three tanks. Water curtains set up between the tank groups and nearby processing units at the 200,000 b/d refinery and petrochemical plant were effective. Damage was split 50-50 between liquid hydrocarbons and tanks and other equipment.

82. 1/20/82 Ft. McMurray, AA 21,000,000 21,840,000

A severe fire in a hydrogen compressor building in a Unifiner unit of an oil sands refinery reportedly started in a 1500-psi lube oil system. Fire fighting by the plant fire brigade, assisted by mutual aid fire brigades, was difficult because of -40°F temperatures. The building reportedly housed three centrifugal hydrogen recycle compressors, a centrifugal natural gas compressor and two 4000 horsepower reciprocating compressors. Further details are not available.

83. 2/9/82 Philadelphia, PA 25,000,000 26,000,000

One of three phenol units was destroyed and the other two damaged by an explosion and fire. In the process, cumene is oxidized with air to produce cumene hydroperoxide which is cleaved to phenol and acetone by acid catalysis. The unit reportedly was shut down at the time. 25,000 gallons of cumene hydroperoxide in an intermediate hold tank was being steam heated. Apparently temperatures exceeded safe limits leading to the venting of cumene from the system. This ignited explosively and caused rupture of the 25,000 gallon tank. Eventually two other process tanks and one containing fuel oil became involved.

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The blast sheared off a 6" sprinkler riser; however, the plant 1500 gpm steam and electric and two 2500 gpm diesel pumps, augmented by 25 city fire department engine companies taking suction from city fire hydrants, were able to supp adequate water. The plant fire brigade, 160 city firemen and mutual aid workers from nearby chemical companies and refineries participated in controlling the fire.

84. 3/31/82 Kashima, Ibaragi Japan 13,800,000 14,352,00

Hydrogen embrittlement of piping in a refinery desulfurizin unit allowed release of fuel oil which promptly ignited an burned for four hours. Further details are not available.

85. 4/18/82 Edmonton, AA 21,000,000 21,840,00

The release of high pressure ethylene from a 1/8-inch stainless steel instrument tubing leading to a gauge from a main line of the interstage piping system of a secondary compressor caused $20,000,000 damage to the low density polyethylene plant. An additional $1,000,000 damage was done to adjoining properties. The tubing failed as a result of transverse fatigue caused by vibrations from the reciprocating compressor. Ignition may have been by static electricity.

The unmanned compressor building was equipped with a combustible gas detection system; however, it failed to sound alarm because of a faulty relay in the control room. Automatic fail-safe valves functioned properly blocking in the flow of ethylene but not before 450-11,000 pounds of gas had escaped.

86. 5/6/82 Duluth, MN 14,000,000 14,560,0

An explosion occurred in the drying and grinding area where fumaric acid was being processed. The ensuing fire spread rapidly through the area, into an adjoining process area and to a 60' x 120' warehouse which was totally destroyed. Apparently static spark from an electric motor ignited dust from the powdered acid and caused the explosion.

87. 10/4/82 Freeport, TX 14,700,000 15,288,0

Failure of a 15 KV transformer containing 235 gallons of mineral oil was the probable cause of this explosion and fire in the electric power plant of a large petrochemical complex. With the ignition of the mineral oil, nearby heavily loaded cable trays ignited. These allowed the spread of fire. Heavy smoke evolved forcing the operators to evacuate the power block control room and making fire fighting by the plant fire brigade very difficult. After 6 hours the concrete roof of the control room collapsed.

88. 12/19/82 Tacoa, Venezuela 50,000,000 52,000,0

The unexpected violent boil-over of a 240,000 barrel fixed roof tank containing 83,000 barrels of what was believed to have been No. 6 fuel oil spread burning oil over a distance of 1,000 feet. The incident began when the plant control room received an alarm indicating that the tank contents were at 190°F. At the time only two of the six steam heating units in the 180' diameter x 56' high tank were operating. One heater was shut down and the temperature returned to 176°F. Six and one half hours later, while the tank was being gaged by two men, a violent explosion blew the tank roof off. Return oil lines entering through the roof were severed allowing oil to enter the dike where it ignited.

After burning for 6 hours, a massive boil-over took place jetting the tank contents hundreds of feet in all directions. Burning oil overflowed the dikes and flowed down hill for distances as great as 1,800 feet. Nearby buildings including occupied dwellings ignited and burned. Sixty vehicles including most of the fire apparatus were destroyed. Fall-out from

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boil-over burned in the dike of an adjoining tank of similar size and service, eventually opening flanges and distorting pipe fittings which provided a continuous fuel supply to that fire. Eventually the roof of the second tank opened and the contents ignited and burned for two days.

The investigation suggests that the tank contents may not have been No. 6 fuel oil or that it may have been contaminated. There has been no previous tank fire experience involving a boil-over of No. 6 fuel oil. Ignition of the tank contents may have been caused by the tank heating procedures, which raised the temperature of the product higher than necessary or safe without taking additional precautions. It is also speculated that current practices for producing No. 6 fuel oil may, in fact, result in a product having boil-over ingredients; a wide range of boiling points.

89. 1/7/83 Newark, NJ 35,000,000 36,050,000

Pipeline gasoline was being received into a 42,000 barrel internal floating roof tank at a products terminal when an overfill occurred spilling about 1,300 barrels into the tank dike. A slight wind (1-5 mph) carried the developing vapor cloud about 1,000 feet to a drum reconditioning plant where an incinerator provided the ignition source. The resulting explosion caused $10,000,000 damage to the terminal and up to $25,000,000 in over 2,000 claims to rail rolling stock and neighboring properties. Although dikes contained the burning spill to the tank which was overfilled, two adjoining internal floating roof tanks and a smaller transmix tank ignited and eventually were destroyed along with 120,000 barrels of product. Since the burning tanks presented little exposure to other facilities, the decision was made to let the fire burn itself out.

90. 4/7/83 Avon, CA 48,950,000 50,419,000

Rupture of a 12" recycle slurry line in a 47,000 barrel per day fluid catalytic cracking unit resulted in immediate ignition of the slurry. The failure occurred in a pipe rack 12 feet above grade. The slurry line pressure was estimated to be between 120 and 160 psi at a temperature of 600°-700°F. Shortly thereafter, a 600 psi steam line failed a few feet from the slurry line. It hampered fire fighting efforts due to extreme noise levels and the vaporizing of liquid hydrocarbons. Water spray of a pump alley and strong refinery water supplies allowed containment of the fire to a 70' x 140' area of the FCC unit. The FCC reactor, regenerator, fractionator, as well as related piping, instrumentation, and electrical equipment sustained severe damage.

91. 4/14/83 Bontang, East Kalamtan, Indonesia 50,000,000 51,500,000

The main cryogenic heat exchanger serving one of two identical 265 MMSCFD processing trains of a liquified natural gas plant ruptured violently. The investigation revealed that a valve on the 24" blowdown line which collected the discharge from various relief valves protecting both shell and internal coils of the main heat exchanger was closed. This effectively prevented the safety relief valves from performing their function. It also prevented a pressure controller at the top of the shell from operating, since it also discharged into the same header. It appears that this valve was omitted from the valve check list for start-up operations. Both trains were being started up following a shut down to allow tie-ins from two additional newly constructed LNG trains.

The 141' high x 14' diameter exchanger was designed for 80 psig and an operating pressure of 25.5 psig on the shell side. Dertme gas from a source in excess of 500 psig caused massive failure of the exchanger. Fragments and coil sections of the all-aluminum 170 ton column were thrown as far as 160 feet. The ensuing fire

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92. 5/26/83 Prudhoe Bay, AK 35,000,000 36,050

A low-pressure NGL feed surge drum ruptured violently in crude oil flow station, resulting in direct damage and su quent fire damage to 1/3 of the enclosing module as we moderate fire exposure damage to the exterior of surrount structures within 100'. It is believed that high pressure f dowostream vessels backed up past valves into the feed si drum filling it with liquid product until it structurally failed. equipment involved was not critical to oil production so oc tions were suspended for only a short time.

93. 7/2/83 Fort McMurray, AA 12,600,000 12,978

A fire involving the heat exchanger section in the gas oil hy treating section of an oil sands plant caused extensive dam Further details are not available.

94. 7/11/83 Port Arthur, TX 15,500,000 15,965

A fire of unknown origin started in the mixing and blen section in the 3-story finishing building of this polyethy bead manufacturing plant. The fire may have burnt for tw minutes before discovery. It substantially damaged the b ing and blending and mixing operations on the upper flo Extruders on the ground floor surfered limited fire and w damage. Damage to communicating laboratory, substa bagging and warehouse buildings was very limited becau effective firewalls and firedoors.

95. 8/30/83 Milford Haven, Wales 15,000,000 15,450

The most likely source of ignition of this 600,000 barrel floa roof tank fire was incandescent carbon particles discha from the top of a 250 foot high refinery flare stack situatec feet from the tank. The 256' diameter x 66' high tank, w contained 348,000 barrels of North Sea Crude at the time of tion, was arranged within a standard individual dike. It h single mechanical seal and was equipped with a 12" high dam but no foam delivery lines or outlets. Reportedly, t were several cracks extending over 11" on the single plate ing roof. Inspections of the roof a few days before the fir vealed oil seepage onto the roof deck. There had been n transfer in the 24 hours preceding the fire.

When first noticed, fire involved about half of the tank area. It progressively spread to the entire surface. Cooling w streams were positioned to protect two 138' diameter 14 barrel fixed roof vacuum gas oil and fuel oil tanks situate feet away. Oils were being pumped out of the three tan preparation for a major foam attack when, 12 hours into the a violent boilover occurred in the crude tank. The ensuin covered 4 acres and destroyed or damaged much of the fighting equipment including two foam trucks. This wa lowed 2 hours later by a second less violent boilover. The n foam attack, which commenced 21 hours after ignition, co ued for 14½ hours before extinguishment was complete. crude tank was destroyed, two fixed roof tanks badly dama and 132,000 barrels of crude oil consumed.

This fire involved the use of 44 pumpers, 6 elevating platfo and 14 foam trucks; from four nearby refineries and the p fire service. In addition, 66 commercial tankers and ver transported the 201,599 U.S. gallons of 3% and 6% foam.

96. 3/8/84 Kerala, India 12,000,000 12,240

The exact cause of this refinery explosion and fire is unkn It is believed that light ends from leaking process unit hea changers entered the return cooling water lines and travel the cooling tower where they were released. Ignition prob was from the adjoining utility plant. The resulting explosio

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house. The refinery's fire station which was located 375 feet from the cooling tower was damaged and the foam truck disabled. Fire fighting was delayed until the public fire service arrived from a station 8 miles away. Other equipment responded from distances of up to 50 miles.

Naphtha from damaged pipelines spilled into the tank dike and ignited. A fourth tank developed a bottom leak and it also fueled a dike fire before becoming fully involved itself. Although 15,850 gallons of foam concentrate was used in an attempt to extinguish the fires, they burned themselves out after 77 hours.

The damage to property inside the refinery was spread over a large area. The cooling tower was totally destroyed and the turbo generator building sustained major damage. Structures housing the electric load centers were almost totally destroyed. The utility plant control room which had a glass wall on the side facing the fire was destroyed and control instruments were damaged to varying degrees.

97. 7/23/84 Romeoville, IL 100,000,000 100,000,000

It has been reported that a circumferential weld about 10 feet above grade on a refinery amine absorber was the source of a leak. As efforts were being made to control the leak, a massive explosion occurred. The 55' x 102' twenty ton vessel skyrocketed traveling some 3,400 feet where it struck and toppled a 138,000 volt power transmission tower.

This explosion resulted in fires in the unsaturated gas plant, FCC and alkylation units which burned uncontrolled. After about one-half hour, a boiling liquid expanded vapor explosion (BLEVE) occurred in a large process vessel in the alkylation unit. One piece of this vessel travelled 500 feet shearing off pipelines before striking a tank in the water treatment unit. Another fragment landed in a unifining unit over 600 feet distant and caused a major fire there.

The first explosion, believed to be from an unconfined vapor cloud, broke windows up to six miles from the plant, caused extensive structural damage to refinery service buildings and disrupted all electric power at the refinery, rendering a 2500 gpm electric fire pump inoperable. One explosion sheared off a hydrant barrel, resulting in a reduction of fire water pressure from the two 2500 gpm diesel engine driven fire pumps, which were operating. The refinery's blast resistant control center, approximately 400' northeast of the absorber, sustained little structure damage.

An estimated 30 paid and volunteer public fire departments, together with equipment from refineries and chemical plants within a 20 mile radius, responded promptly. Many of the pumpers took suction from the adjoining canal and from a quarry. The pumpers and a 12,000 gpm fire boat eventually provided water at pressures sufficient for fire fighting.

98. 8/15/84 Ft. McMurray, Alberta 76,000,000 76,000,000

Erosion failure in a 10" slurry recycle oil line in an 82,000 b/d fluid bed coking unit released liquids near their auto-ignition temperature. Vapors which covered a large area ignited almost immediately resulting in a large area ground fire which led to the failure of six or seven more lines. The fire eventually extended over a 150 foot area with damage up in the unit structure to over 100 feet.

Metallurgical examination revealed that an 18" long piece of carbon steel pipe had inadvertently been inserted into the 5-chrome slurry recycle line during an earlier metals inspection.

The reactor fractionator, light gas-oil stripper, 15,000 horsepower air blower, pumps, pipe racks, etc. were severely damaged or destroyed.

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About 2,700 barrels of hydrocarbon liquids were released from process equipment during the fire. Much of this was by gravity flow from ruptured lines although pumps, which could not be shut down, contributed much of the flow. A 900 psig steam line, which supplied the turbine drivers of the compressors, ruptured hampering fire fighting efforts.

99. 9/30/84 Basile, LA 30,000,000 30,000,000

Failure of a threaded 1½" drain connection on a rich oil line at the base of an absorber tower in a large (1.35 MMMCF/D) gas producing plant allowed the release of rich oil and gas at 850 psi at -40°F. The resulting vapor cloud probably ignited from the ignition system of engine driven recompressors. The 75' high x 10' diameter absorber tower eventually collapsed across the pipe rack and on two exchanger trains. Breaking pipelines added more fuel to the fire. Severe flame impingement on an 11,000 horsepower gas turbine driven compressor-waste heat recovery and super-heater train resulted in its near total destruction.

100. 11/19/84 Mexico City, Mexico 50,000,000 50,000,000

There are currently two explanations of the circumstances which precipitated this disaster at a large LPG terminal. One report states that butane being loaded into a truck transport leaked from a loading hose. The liquid spill vaporized forming a vapor cloud which covered the loading area, a nearby cylinder filling building, and several warehouses. Finding an ignition source, the vapors flashed back to the truck transport where a fire burned for 10-15 minutes severely exposing the truck's tank and leading to a boiling liquid expanding vapor explosion (BLEVE). The exploding truck tank rocketed about 400 feet striking and rupturing one of four 30,000 barrel butane spheres. Rupture of a second adjoining sphere occurred almost simultaneously, possibly the result of missile damage. The tank's contents, estimated to be 48,000 barrels of butane, flooded a 600-800 foot radius. Ignition was almost instantaneous creating a fire ball estimated to be 2,000 feet in diameter.

Located near the sphere was a group of forty 40,000 gallon bullets many of which were empty. Some were knocked off of their supports by the blast. Fires at ruptured lines and valves among the bullets allowed flame impingement on other tanks and subsequent BLEVES. One tank rocketed 2,000 feet from the terminal. LPG transport trucks lined up waiting to enter the terminal ignited from the initial fire ball.

The other report states that the terminal was receiving LPG through a 12" pipeline for storage in four 900 barrel bullets and that one or more of the tanks overfilled and ruptured. Delivery rates may have been as high as 75,000 b/d. Attempts to close the tank inlet valves were unsuccessful. Ignition which took place 15 to 20 minutes later reportedly was from a 100 foot high flare stack located about 200 feet away.

The terminal had an extensive fire water system with fixed manually actuated water spray protection for the spheres and bullets and monitor nozzle coverage of the spheres. It was found disabled by the initial BLEVE.

McLennan

ONE HUNDRED LARGEST LOSSES
A THIRTY-YEAR REVIEW OF PROPERTY DAMAGE LOSSES
IN THE HYDROCARBON - CHEMICAL INDUSTRIES

JULY, 1982

FIFTH EDITION
ADDENDUM AND ANALYSIS

Only two fires or explosions in the hydrocarbon-chemical industries causing property damage in excess of $10 million came to our attention in 1981. For previously issued studies, $10 million was the qualifying entry level for losses. In 1979 and 1980 there were nine such losses in each year. Rather than issue a Sixth Edition of a paper under this title in which we would merely add two losses and delete two, maintaining the criteria of 100 largest losses, it seemed more appropriate to issue an Addendum to the Fifth Edition describing the two additional losses, and an over-all analysis.

—ADDENDUM—

DATE	LOCATION	LOSS AT TIME OF OCCURRENCE	LOSS TRENDED TO 1/1/82
2/11/81	Chicago Heights, Illinois	$14,000,000	$14,630,000
8/20/71	Shuaiba, Kuwait	$50,000,000	$51,500,000

While preparing a batch for a reactor in a resins manufacturing plant, steam was applied to a catalyst in a weigh tank because of sub-zero weather. An excess of heat caused the reaction to begin in the weigh tank. Since means for cooling the weigh tank were not available, the exothermic reaction caused the boil-over of the weigh tank's contents. A vapor cloud rapidly filled the one-story noncombustible building.

Even though emergency shutdown procedures were immediately initiated, there was ignition of the vapors. The explosion disabled sprinkler protection. The ensuing fire, which was fought by public fire departments using relay pumping to supply monitor nozzles, destroyed the 7,000 square foot resins reactor area and an adjoining 6,000 square foot warehouse.

The cause of the refinery tank farm fire which destroyed eight tanks and damaged several others has not been disclosed. It appears to have originated at a pump manifold within the common dike serving six 160,000 barrel floating roof tanks containing petrochemical grade naphtha. Naphtha was being pumped into one of the tanks when the initial explosion and fire occurred.

About one-half hour into the fire, the seal of the first tank caught fire. This was followed rapidly by two others. These spread progressively, eventually involving fire of the six tanks in the group. The sixth tank was empty and sustained severe damage.

A strong fire fighting attack was initially made by the refinery fire brigade, later assisted by near-by industrial fire brigades, military and public fire departments. As many as 75 pieces of mobile fire fighting equipment were used to apply up to 11,000 US gpm of water and foam solution during the fire which lasted five days and twenty hours.

(continued)

NJPIRG

NEW JERSEY PUBLIC INTEREST RESEARCH GROUP
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Legislative Office, 11 N. Willow St., Trenton, NJ 08608, 609-394-8155

Statement of the New Jersey Public Interest Research Group

In Support of S-2058 and A-2832:

The New Jersey Hazard Elimination Through Local Participation Act

Before a Joint Pubic Hearing
of the Senate Environmental Quality Committee and
Assembly Energy and Environment Committee

Presented by Marian Wise, Esq., Environmental Advocate

INTRODUCTION

My name is Marian Wise an I am an environmental advocate for New Jersey Public Interest Research Group. The New Jersey Public Interest Research Group (NJPIRG) is a non-profit, non-partisan organization with more than 75,000 members throughout New Jersey. NJPIRG engages in research, education, litigation and advocacy in the areas of environmental preservation, consumer protection and governmental reform. We are very happy to be here today and we thank Senator Van Wagner and the Senate Environmental Quality Committee as well as Assemblyman Smith and the Assembly Energy and Environment Committee for affording us this opportunity to present our testimony in support of The "New Jersey Hazard Elimination Through Local Participation Act."

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RIGHT TO KNOW LAWS PROVIDED VITAL INFORMATION

As the Committees know, in 1988 large industrial facilities in New Jersey and across the nation were required for the first time to report to the federal government their releases to the environment of 326 toxic chemicals. The reporting requirement was established by Section 313 of the Federal Emergency Planning and Community Right to Know Act (EPCRA) of 1986. The law required that by July 1, 1988 large producers and users of the designated chemicals had to report their 1987 releases of toxic chemicals into the air, land and water and their transfers of the chemicals to public sewage systems or offsite to waste treatment plants.

RIGHT TO KNOW REVEALED THE EXTENT OF THE TOXICS PROBLEM

Our study of the largest toxic chemical dischargers in New Jersey, "Toxic Trends," revealed that in 1987 alone, over 225 million pounds of toxic chemicals were released into the state's air, water, land and sewage systems, and an additional 27 million pounds were transferred to off-site treatment facilities.

We narrowed our focus to discharges involving chemicals which pose known threats of cancer or adverse reproductive effects, such as birth defects or fetal damage. For this report, only facilities discharging at least 400,000 pounds of known and potential carcinogens and reproductive hazards in 1987 were analyzed. We concentrated primarily on known or potential carcinogens and reproductive hazards in order to limit the debate to those chemicals demonstrated to be particularly hazardous.

In 1987, seventeen New Jersey facilities exceeded the 400,000 pound threshold for discharges of these toxic substances. These top facilities discharged a total of 15,769,103 pounds of known or potential carcinogens into the state's air, water and sewage systems. These facilities alone emitted almost 12 million pounds or 73% of these hazardous substances into the air and 4 million pounds or 27% into the water. Chemicals included for consideration in our report are those which have some of the following characteristics:

1. known, suspected or experimental carcinogens;
2. known, suspected or experimental teratogens or mutagens;
3. having human mutagenic data;
4. having experimental reproductive effects

Toxic substances which meet one or more of these criteria and which were released by one or more of the seventeen facilities are chemicals such as: Benzene: A human carcinogen which produces myeloid leukemia and lymphomas by inhalation. An experimental carcinogen and teratogen. Other experimental animal reproductive effects, or Vinyl Chloride: A human carcinogen which causes liver and blood tumors. An experimental carcinogen and teratogens. Human reproductive effects by inhalation; changes in spermatogenesis. Human mutagenic data.

Air and water discharges of these chemicals directly impact the health and environment of the community in which a facility is located. Discharges to sewage systems find their way into the nearby environment, either through evaporation into the air at the sewage treatment plant or by passing through the plant into receiving streams or by contaminating sludge.

In July of 1989 companies reported their toxic discharge information for the 1988 year. Our report analyzes the 1988 data for those facilities which in 1987

discharged over 400,000 pounds of known or potential carcinogens or reproductive hazards into air, water, or sewage systems.

Facilities discharging known or potential carcinogens or reproductive hazards - 1988 data and reduction trends

Facility	Munic.	Air	Water*	Total	Tot. Change From 1987	% Change From 1987
A&S**	E. Ruther.					
Butler Printg	Butler	635,544	0	635,544	0	0
Exxon***	Linden	257,340	1,786	259,126	-334,139	(-) 56
Ford Motor	Edison	509,250	0	509,250	-27,200	(-) 5
GM	Linden	685,050	1,000	686,050	- 483,700	(-) 41
Hercules	Parlin	897,353	7,030	904,383	+76,863	(+) 9
Hof-LaRoche	Belvidere	394,820	910	395,730	- 185,499	(-) 31
Hof-LaRoche	Nutley	410,532	339,450	749,982	+ 70,222	(+) 10
Kalama	Garfield	37,465	1,715,245	1,752,710	+230,474	(+) 15
Lehigh Press	Pennsauken	442,472	0	442,472	- 345,221	(-) 44
Merck	Rahway	111,680	390,000	501,680	+89,230	(+) 22
Permacel	No. Bruns.	2,428,677	0	2,428,677	- 557,873	(-) 19
Radel Lat.	Newark	582,219	750	582,969	- 605,831	(-) 51
Rhone-Poul.	New Bruns.	113,750	610,000	723,750	+147,550	(+) 26
Riegel	Milford	357,300	0	357,300	- 12,700	(-) 3
Sandoz	Fair Lawn	17,800	1,584,250	1,602,050	+36,800	(+) 2
Union Carb.	Piscataway	142,061	57,407	199,468	- 336,438	(-) 37
	Totals	8,023,813	4,707828	12,731,641	-2,237,462	(-) 14.9****

(-) Indicates a reduction in reported discharges 1987-1988
(+) Indicates an increase in reported discharges 1987-1988
* Discharges into water and into publicly owned sewage systems.
** Neither A & S nor the DEP could locate their copies of release data, however DEP confirmed that A & S turned in data.
*** EPA database does not distinguish between Exxon Chemical and Bayway Refinery
****This percent change does not include 1987 totals for A& S

Source: Toxics Release Reporting Forms available from the New Jersey Department of Environmental Protection and the United States Environmental Protection Agency

The overall total discharges from these sixteen facilities were reported to be reduced by 2.2 million pounds in 1988. These reductions were evident only in reported air emissions. In fact, the emissions to water reportedly increased by 300,000 pounds an increase of almost 7%.

When first revealed, the sheer magnitude of the chemical releases revealed by the Right to Know law seemed to catch the public government agencies and industry by surprise. Some companies tried to defend their high discharge numbers by arguing that their particular releases consisted of relatively benign chemicals. Others tried to convince the public that the human health risks associated with the releases were very low. Still others reacted by pledging to reduce their releases, some by as much as ninety percent. Our report concluded that the reductions, if any, were minimal, and that true toxics use reduction was simply not occurring.

It is important to note that only the largest toxics users were required to report, therefore total reported discharges represent only a portion of all toxic emissions in the state and country. Yet the data provides citizens of New Jersey and the nation with an important snapshot of American industry's routine releases of industrial toxics into the environment.

RIGHT TO KNOW IS ONLY THE BEGINNING

It is now an established right in New Jersey and federal law that the government and the public have the right to know about the hazardous and toxic substances which are used, stored, produced, or discharged into their communities. New Jersey citizens also have, as a matter of right under the "Toxics Catastrophe Prevention Act," the assurance that the extremely dangerous substances used by workers or stored in our communities are handled in such a way as to prevent a potentially catastrophic discharge. It is now time for the workers and consumers of the state of New Jersey to have the right as a matter of law to reside in communities where they can play an active role in ensuring that the dangers associated with the use of hazardous substances are reduced to an absolute

New Jersey State Library

minimum. The provisions of the HELP legislation will afford citizens and workers much needed powers to achieve this goal.

PREVENTATIVE STRATEGIES ARE ESSENTIAL

NJPIRG, joined by a growing coalition of community groups, legislators, regulators in New Jersey, believes that all facilities should reduce significantly their toxic discharges and that they should do so by practicing pollution prevention/toxics use reduction. We believe that the best way for facilities to accomplish reductions is to change their production processes and products so that they use and produce fewer toxic chemicals and create less waste in the first place, thus avoiding the need to treat or recycle wastes. Toxics use reduction is far superior to commonly used pollution control methods which are often technically and economically inefficient in their attempt to capture wastes once they are already created.

Just as toxics use reduction is a crucial pollution prevention strategy, so is Hazard Elimination Through Local Participation. Preventative strategies should be sought by companies at the production level and throughout the industrial facilities in conjunction with active education and input of employees and local citizens. Such a system of public participation would directly enhance both pollution and hazard prevention. We are in desperate need of legislation that encourages industrial and local participation in the reduction and elimination of toxic and other hazardous threats to human health and our environment. It is this kind of preventive strategy that is needed in our local communities to ensure the safety of our workers, community residents and environment. We therefore strongly urge you to support the HELP legislation. Thank you.

C Y A N A M I D

CORE SAFETY

&

RESPONSIBLE CARE

PROGRAMS

87X

HISTORICAL PROSPECTIVE

- CYANAMID (& OTHER MAJOR COMPANIES)
- **BEFORE SARA & TCPA**
  - CORE SAFETY PROGRAM/EMPLOYEE SAFETY & PSM
  - SAFETY & LOSS PREVENTION STDS.
  - EMERGENCY RESPONSE/INTERNAL & EXTERNAL
  - AUDIT PROGRAMS
  - COMMUNITY INVOLVEMENT
    - LIMAC
    - Joint Drills with LFD
    - LFD Indoctrination Tours
- **SINCE SARA & TCPA**
  - CHEMICAL INVENTORY REPORTING/PRESENTATIONS
  - COMMUNITY-WIDE DRILLS/PLANS
  - RMP FORMALIZED/NJDEP REVIEW
  - COMMUNITY INTERACTION
    - HMAC
    - Active LEPC Participation
    - Open House/Newsletter
    - Responsible Care

CORE SAFETY PROGRAM

- MANAGEMENT ACCOUNTABILITY
- REDUCE WORKER ACCIDENTS AND INJURY SEVERITY
- SHOP ENVIRONMENTAL ACCIDENTS FROM OCCURRING
- INVOLVE EMPLOYEES AT ALL LEVELS
- DEVELOP CULTURE OF EXCELLENCE IN SAFETY -- OFF-THE-JOB AS WELL AS ON
- COMPREHENSIVE PROGRAM ELEMENTS/ROUTINE
- RESPONSIBILITY/MEASUREMENT/REPORTING
- PROCESS SAFETY MANAGEMENT

CORE SAFETY PROGRAM ELEMENTS

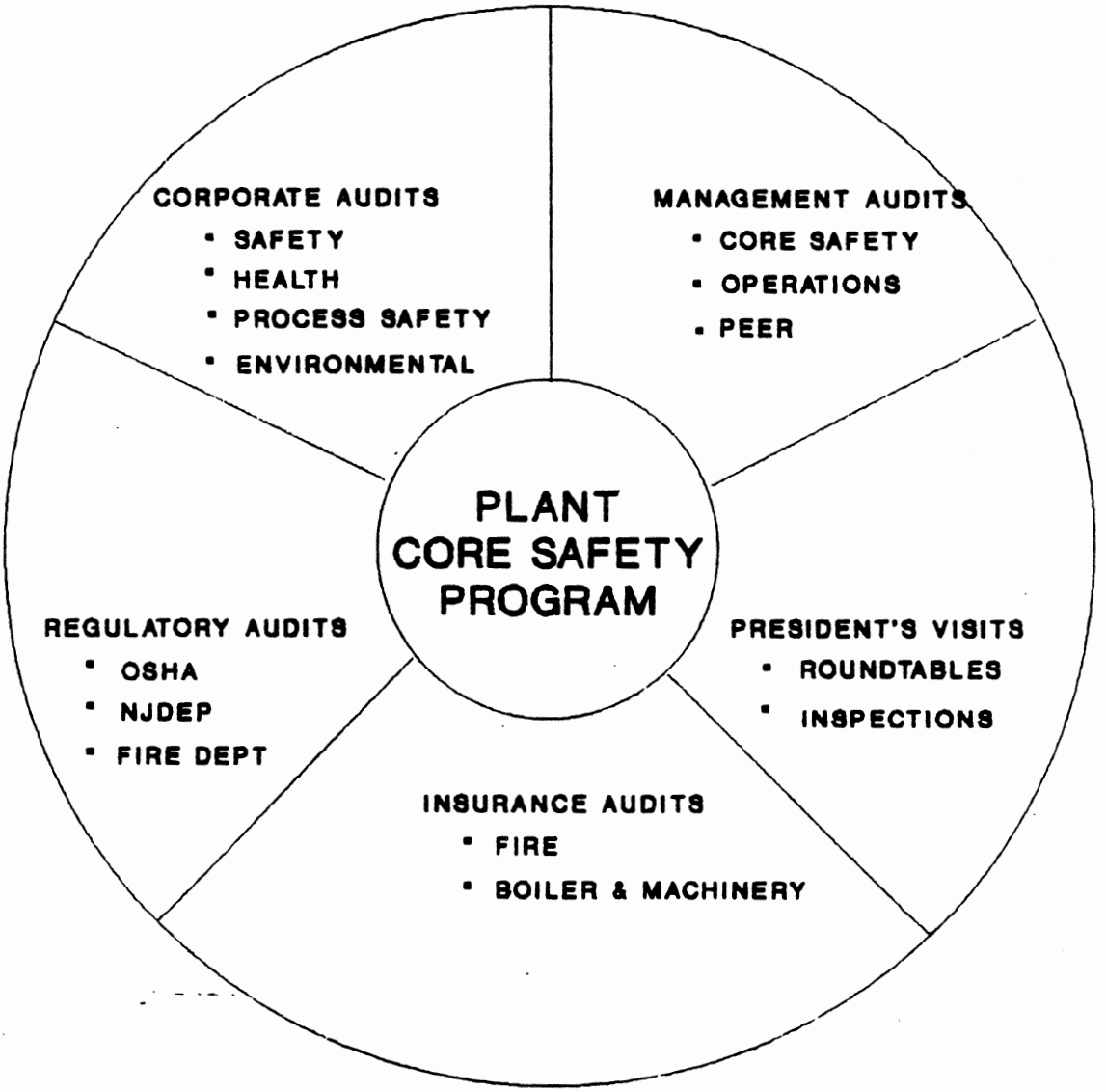
SAFETY MEETINGS	Plant Manager's Safety Meeting Department Safety Meetings Union/Management Safety Meetings Supervisors Safety Meeting Daily 5-Minute Safety Talk
SAFETY AUDITS	Plant Manager's Audit Department Managers Audit Off-Shift/Weekend Audit Daily Unsafe Acts Aucit
OTHER ELEMENTS	Process Safety Management Off-The-Job Safety Job Safety Analysis Potential Incident Reporting Compliance With Safety Standards Compliance With Hygiene Standards

CORE PROCESS SAFETY

PROCESS SAFETY MANAGEMENT

- PROCESS DOCUMENTATION
- OPERATING PROCEDURES
- TRAINING
- ACCIDENT INVESTIGATION
- HAZARD ANALYSIS
- RISK ASSESSMENT
- PREVENTATIVE MAINTENANCE
- MANAGEMENT OF CHANGE
- SAFETY REVIEW

EXTERNAL AUDITS



SAFETY PERFORMANCE

5 Year Average

(No. of Lost Time Injuries per 100 man years)

LINDEN	0.12
CYANAMID	0.13
CMA	0.51
CHEMICAL INDUSTRY (NJC)	0.79
ALL INDUSTRY	2.46

RESPONSIBLE CARE

- CMA INITIATIVE - CODES OF MANAGEMENT PRACTICE
- COMMUNITY AWARENESS
- EMERGENCY RESPONSE
- WASTE & RELEASE REDUCTION

9KX

COMMUNITY AWARENESS

- COMMUNITY DRILLS
- PRESENTATIONS TO CIVIC, CHURCH, LOCAL GOVERNMENT ORGANIZATIONS
- ERIM BROCHURE
- SARA BROCHURE
- NEWSLETTER
- OPEN HOUSE
- LEPC
- HMAC
- AIR QUALITY MONITORING STUDIES (AKIBA)

EMERGENCY RESPONSE

- Written Plans - Plant/Community
- Drills - Plant/Community
- Training - HAZWOPER/Fire School/ERIM
- First Responder Tours
- LEPC/LIMAC/HMAC Involvement

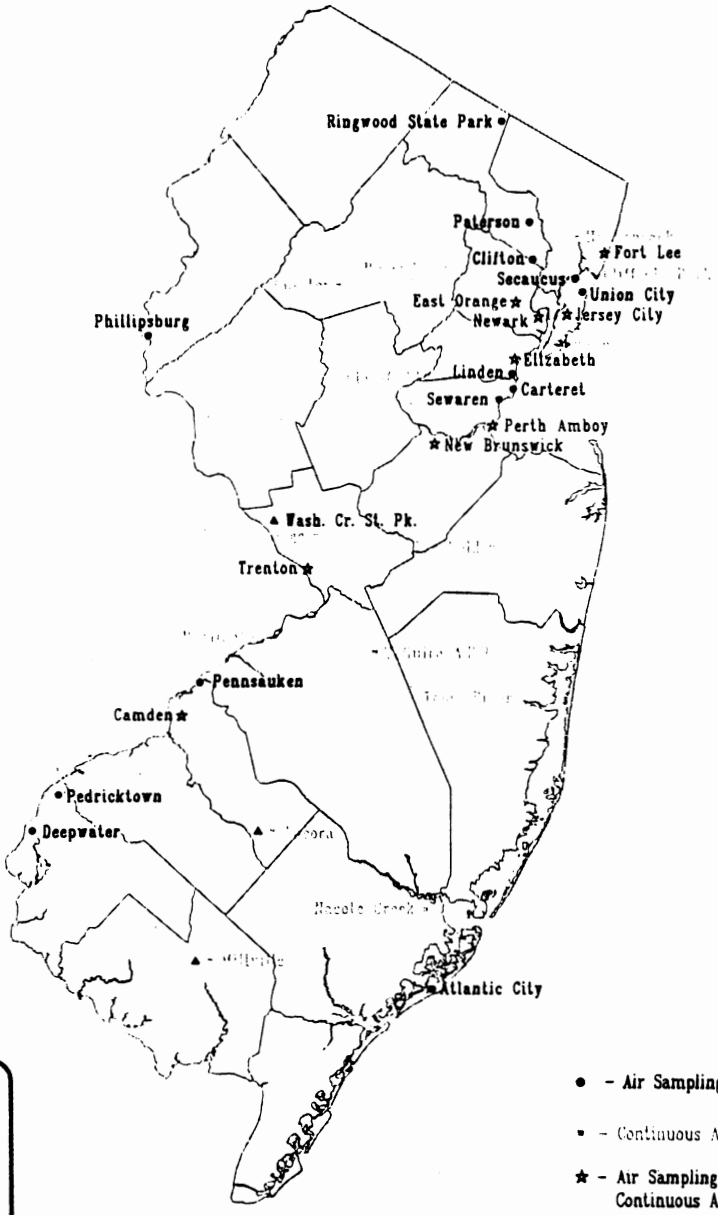
96X

WASTE & RELEASE REDUCTION

- MANAGEMENT COMMITMENT/PRIORITY/ACCOUNTABILITY
- WASTE TRACKING SYSTEM
- WASTE MINIMIZATION COMMITTEE
- RISK REDUCTION PROGRAM
- COMMUNICATION TO EMPLOYEES
- AWARDS/RECOGNITION PROGRAM/ENCOURAGE EMPLOYEE IDEAS, INVOLVEMENT)

#2443b

Air Monitoring Network Location Map



To Obtain Detailed Information On The Air Monitoring Network Call 609-292-0138

● - Air Sampling Network

▪ - Continuous Air Monitoring Network

★ - Air Sampling and Continuous Air Monitoring Network

▲ - Acid Precipitation Network

100 x

NEW JERSEY STATE
CHAMBER OF COMMERCE
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STATEMENT OF

NJ STATE CHAMBER OF COMMERCE

SENATE ENVIRONMENTAL QUALITY COMMITTEE

AND

ASSEMBLY ENERGY AND ENVIRONMENT COMMITTEE

JOINT HEARING ON

THE HAZARD ELIMINATION THROUGH LOCAL PARTICIPATION ACT

(S. 2058/ A.2832)

RUTGERS LABOR EDUCATION CENTER

FEBRUARY 28, 1990

To the Chairman and distinguished members of the Senate Environmental Quality Committee and the Assembly Energy and Environment Committee, thank you for the opportunity to comment on S.2058/A.2832. My name is Clare Schulzki and I'm the Associate Director of Government Relations for the NJ State Chamber of Commerce.

We strongly support good health and safety in the workplace. That should go without saying. There is considerable law that the State Chamber has worked with both houses to create that guarantees safety in the workplace. However, we believe that the "HELP" legislation, as drafted is unnecessary and duplicates federal initiatives. The Occupational Safety and Health Administration, OSHA, was

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specifically designed to insure safe working conditions for employers and employees. Furthermore, under the Worker and Community Right_to-Know, companies are required to have emergency planning notification, emergency release notification and to report on chemicals and releases for the community. Public participation is also guaranteed within the function of Local Emergency Planning Committees, which is made up of local and state officials; health, environmental, transportation personnel; industry representatives and others.

Perhaps the most serious area of concern that we have with the bill, is with the formation of self-appointed "Qualified Community Organizations." We vigorously believe that it is unnecessary and unfair for any self-designated organization to have access to a facility and its records. This would unnecessarily repeat the inspection powers the DEP already has, and LEPC's. The DEP, with qualified experts, already conduct unannounced inspections. We believe that the inspection of facilities by community organizations will do little to prevent workplace hazards and even could contribute to hazard potential.

Another concern that we have with the QCO's is that there is nothing in the bill to limit the number of QCO's that would have the right to inspect individual facilities. These

inspections, in addition to those of the DEP and LEPC's could be countless.

We believe that the Hazard Prevention Committees, HPC's, are unnecessary. Most companies already have their own safety and health committees. In the chemical and petroleum industry, they have their own emergency response brigades as well. Forming an additional committee, of 2-14 persons, made up equally of management and employees, would be a repetitive and time consuming effort. The mandated HPC's would require 16-22 hours per HPC member each month, to inspect facilities, review hygiene and medical testing plans and accompany LEPC's on their investigative inspections. That's far too much time for volunteers. Coordinators under the LEPC's already made up of knowledgeable individuals would be far more effective.

We see enormous problems with each member of the Hazard Prevention Committee having the right to close down a particular process or even the entire facility if they feel, suspect or believe that a hazard may exist. That's far too much authority to invest in one individual. That's one person, not even a majority of the committee, who would be able to shut down a facility, which could not be restarted until a government official approves. Because it's the company which is responsible for all actions, we believe that its management should make the final decision.

Under the bill, HPC's decisions are ruled by majority vote. If there is a tie vote, this will need to be resolved by arbitration. A 30-member Hazard Prevention Arbitration Board will be paid $250 per day for each day of arbitration, plus expenses. However, according to this bill, HPC advocate can serve as members of the Arbitration Board. We see this as a conflict and a potentially costly mechanism.

In summary, we oppose S. 2058 /A. 2832, the "HELP" bill because we believe that its intent of insuring safety in the workplace is already met with OSHA, the Workers, Community Right-to-Know Act and through SARA Title III. We don't believe that it's necessary to mandate the formation of Hazard Prevention Committees in the workplace because they exist in a form mutually agreeable to labor and management on a site specific basis. Facilities already have their own health and safety committees already in place. We vehemently oppose QCO's as outlined in this legislation. However well-intentioned this bill is, we believe it's simply unnecessary.

Thank you.

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TESTIMONY OF VINCENT A. GALLAGHER

AT THE PUBLIC HEARING OF THE

JOINT SENATE AND ASSEMBLY ENVIRONMENTAL COMMITTEES

ON THE HAZARD ELIMINATION THROUGH LOCAL PARTICIPATION ACT

February 28, 1990

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My name is Vincent A. Gallagher. I am a former OSHA inspector. I have performed 792 OSHA inspections during my 12 years with OSHA. I have a Masters Degree in Occupational Safety and Health from New York University. Currently, I provide occupational safety and health services to labor unions, lawyers, educational institutions and United Nations agencies in Latin America. I have consulted for 5 governments overseas as well as the World Bank and Confederations of Labor Unions in Peru and Colombia.

I am here today because I feel very strongly about the need for Worker Participation in discovering and remedying hazards generated in the workplace.

The need for Worker Participation in occupational safety and health management systems has been recognized by the highest authorities in occupational safety and health for many years.

A. United Nations - International Labor Organization. In 1949, the United Nations developed a Model Code of Safety Regulation for Industrial Establishments for the Guidance of Government and Industry. They recommended that government establish laws which provide mechanisms for inclusion and empowerment of the people exposed to the hazards. The functions that the United Nations recommended in 1949 are very similar in nature though broader in scope to those of the Hazard Prevention Committees proposed in this Bill (see attachment #1).

Some developed countries which have legally established the requirement for occupational safety and health committees are West Germany, England, Sweden, Finland, Canada, France, Spain and others. Indeed, in many developing countries in Latin America, such as Colombia, Peru, Boliva, Uruguay and Mexico, occupational safety and health committees are established by law.

More recently, at the International Labor Conference in 1981, one point, obvious and undeniable, was recognized by the majority of countries of the United Nations - the cooperation of workers, at the level of the undertaking, is <u>indispensable</u> for the prevention of occupational accidents and disease.

It was found at this conference that irrespective of the more or less detailed nature, and the effectiveness, of National Safety Regulations, these cannot provide a complete and effective solution for in-plant safety problems...The worker and their representatives have an indispensable role to play in this endeavor, for several reasons:

- The workers are closer to the production process and have to spend many hours daily in the working environment - they are well aware of the existence of stress factors, pollutants, and accident hazards.

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- In the last analysis, it is for the workers safety that safer design of materials and equipment and work safety rules are developed.

The second attachment to my Testimony outlines the functions of the United Nations - International Labor Organization's Recommendations No. 164. You will see again that the functions recommended by the United Nations at this time are similar though broader in scope than the functions of the Hazard Prevention Committees proposed by this Bill.

B. The National Safety Council. The National Safety Council has long recognized the need to encourage the participation of workers in the hazard recognition, evaluation and control process through inclusion of workers on occupational safety and health committees. The functions of the safety and health committee recommended by the National Safety Council are also very similar to the functions proposed in this Bill.

The Occupational Safety and Health Administration has also long recognized the value of worker participation in occupational safety and health programs by way of the establishment of occupational safety and health committees. Although OSHA has no laws or standards with regard to safety and health committees, the literature of the Department of Labor gives abundant examples of the value of such committees. The functions that OSHA recommends are again similar to the functions that are proposed by this Bill.

My experience with OSHA leads me to agree with the United Nations that we cannot depend on national laws alone. OSHA's role is primarily to provide economic incentive through threat of penalty, to employers to comply with OSHA's standards. OSHA standards are to a great extent inadequate. OSHA standards were adopted from the 1970 American National Standards Institute's standards. These are National Consensus Standards. National Consensus Standards by their nature are minimal, economically and politically compromised, and necessarily lagging behind the newest developments in safety technology. The great majority of OSHA standards are over 20 years old. They are obsolete. When they were promulgated over 20 years ago, the authors felt that they were simply the minimum. However, many employers feel compliance with OSHA standards is the maximum they should do.

Since I left OSHA in 1985, I have investigated over 200 serious accidents. The great majority of the causal factors involved in these accidents were not addressed in OSHA standards. In many instances, OSHA had made inspections of the equipment in these factories and had not found violations.

The majority of safety hazards found in a workplace are not covered by OSHA.

With regard to health hazards, OSHA has standards on about 500 toxic chemicals. There are over 50,000 different toxic chemicals being used in our factories.

Even if the standards covered all the hazards, OSHA inspectors simply cannot inspect enough factories to create the environment to force compliance. In New Jersey, OSHA has about 36 safety specialists and 28 industrial hygienists to cover over 195,000 workplaces. Employers can expect to see an OSHA inspector about every 50 years.

If OSHA concentrated all of their resources in the manufacturing industries (of which there are approximately 14,770), each employer could expect to see a safety specialist every 8 years and an industrial hygienist every 17 years.

We have all read of recent large fines by OSHA. They get publicity as they should. However, employer associations compile and disseminate data relative to activity within their industry. The data in New Jersey shows OSHA averages 4 violations per inspection with an average fine per inspection of less than $1,000. Waiting 8 to 17 years for an OSHA inspector and then being fined less than $1,000 is hardly an economic threat.

OSHA addresses the <u>symptoms</u> of a problem - not the root causes. The root causes lie within the management system. That is, within the relationships between the people in the factory. Time and time again, I have seen citations issued, conditions corrected, only to recur in a short time because there was no corresponding change within the values of the management system. This Bill goes toward making systemic changes rather than symptomatic changes.

OSHA can be expected to see the symptoms of a problem if it happens to exist when the inspector passes through. They can be expected to apply a standard if one exists and to issue a penalty if the circumstances warrant it. OSHA does not live with the hazard. OSHA is not affected by the hazard. OSHA does not know the people who suffer the injury and disease.

What OSHA does is important and necessary. But even if they doubled or tripled their staff, they still would be able to provide only a minor presence in any particular workplace.

By empowering those who live with the hazards, you will provide a greater hope for all of us in New Jersey. We all have loved ones either exposed within the factory or in our communities. We who are in favor of this Bill are simply asking for the right to participate in the systems which affect the health and well-being of the people of New Jersey. God knows something more must be done in New Jersey.

If we control the hazards in the workplace, our opportunities for eliminating community hazards are greatly increased.

The highest authorities in occupational safety and health, the United Nations, the National Safety Council and OSHA, have long ago recognized the need for worker participation in the recognition, evaluation and control of industrial hazards. This Bill provides concrete mechanisms to assure that this participation takes place. I cannot think of a better way to get the right people involved than through the mechanisms proposed in this Bill.

If I have learned anything in my 20 years in occupational safety and health, it is that the people exposed to the hazard have an extremely important role to play in the hazard control process. I have learned much more about hazards and their control from the people exposed to the hazard than any other source. This Bill provides a mechanism for inclusion and empowerment that goes well beyond OSHA's very limited role of enforcement and attempts to make positive systemic changes.

Thank you very much for your kind consideration and for giving me the opportunity to express my opinions.

109x

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Economic Development

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POSITION STATEMENT OF NJ SEED

TO THE SENATE ENVIRONMENTAL QUALITY

AND

ASSEMBLY ENERGY AND ENVIRONMENT COMMITTEES

AT A JOINT HEARING ON THE

HAZARD ELIMINATION THROUGH LOCAL PARTICIPATION ACT
(S-2058/A-2832)

RUTGERS LABOR LAW CENTER

WEDNESDAY, FEBRUARY 28, 1990

Mr. Chairman, Mr. Co-Chairman and distinguished members of the Senate Environmental Quality and the Assembly Energy and Environment Committees, I am James C. Morford. I come before you today to address the proposed Hazard Elimination Through Local Participation Act (HELP) in my capacity as Secretary of the New Jersey Society for Environmental, Economic Development. NJ SEED is our state's leading business/labor advocacy coalition. Representing New Jersey's most prestigious business and labor organizations, NJ SEED has worked for nearly two decades to maintain the delicate balance between a healthy natural environment and a healthy economic environment.

NJ SEED strongly supports the objectives of assuring good health and safety practices in the workplace.

NJ SEED looks favorably upon those specific provisions of the HELP Act that would create or clarify the existence of Local Emergency Planning Committees (LEPCs) and Hazard Prevention Committees (HPCs). At the same time, however, we believe their existence sufficiently fulfills the purpose and intent of the legislation and makes the proposed Qualified Community Organizations (QCOs) redundant, potentially disruptive and a prospective drain on taxpayers' dollars.

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we would oppose creation of these self-appointed QCOs or, at the very least, suggest that they be absorbed within the LEPC structure. As designed, the LEPCs provide ample opportunity for community outreach and input by including among their membership representatives of environmental advocacy groups, community groups or public volunteers, medical, industrial hygiene, environmental and safety experts, labor organizations, and broadcast and print media.

Likewise, the proposed Hazard Prevention Committees call for the appointment of employee/employer advocates within a covered facility who would receive the training and authority necessary to insure safe working conditions and mitigate any dangers to the community.

Both the LEPCs and the HPCs are empowered to inspect a facility on a regular basis. In addition, they have the authority to retain experts to assist them in carrying out their responsibilities. To now add a third layer of inspections, regulations and funding is not only unnecessary, it would also further burden New Jersey's already hard-pressed manufacturing sector. We see no legitimate need for creating Qualified Community Organizations.

While we endorse creation of LEPCs and HPCs, NJ SEED does have concerns about particular provisions of the bill that we would urge you to revise or amend. Specifically:

* Section 10 (a,b,c) concerns fees and costs and directs the owner or operator of a covered facility to pay all Local Emergency Planning Committee costs for reviewing and evaluating the emergency response plan, including the cost of retaining experts. These fees can include a 10% surcharge to cover the administrative, record-keeping, overhead and other expenses. This would break new ground since LEPCs are not currently funded. Not only do we question the propriety of forcing owner/operators to carry this burden, in addition to providing the training and expenses of HPC advocates, but we are concerned by the lack of any caps or oversight authority to insure that this money is not being squandered. Anyone who has ever had to retain a consultant knows that the fees can add-up pretty quickly.

* As previously mentioned, we oppose the QCO concept for many reasons, only one of which is that nothing in sections 12, 13 and 14 prevents the formation of an unlimited number of "Qualified Community Organizations", each one with the authority to inspect a single facility at least four times a year. We can't even begin to imagine the confusion

and disruptions this could spawn.

* Section 20 (b) orders the Department of Environmental Protection to establish a technical assistance grants program to assist the QCOs and HPCs in conducting inspections and utilizing experts. Costs eligible for reimbursement under this provision would include consulting fees, travel and lodging expenses for experts, laboratory costs and report preparation costs. Section 20 (d) states that eligible QCOs and HPCs may receive a technical assistance grant of up to $3,000 per year per inspected facility, and Section 20 (f) mandates that any expenses sought for reimbursement will be presumed valid, unless specifically rejected by the DEP. We are greatly concerned that this entire Section 20 could open the door to widespread abuse by various and diverse special interest groups, all of whom would be subsidized by state taxpayers. In addition, only $200,000 is appropriated to fund this potential bonanza, an incredibly small amount considering the number of QCOs and HPCs that will inevitably surface, if this legislation is adopted as introduced. The $200,000 figure would soon be multiplied to the nth degree.

* Section 29 (e-4) requires that copies of all Hazard Committee meeting minutes be retained by the owner of a facility for some 30 years, a period of time that seems unnecessarily lengthy and could create substantial recordkeeping and storage headaches.

* Section 40 (a & b) allows a single HPC advocate or alternate to direct the temporary cessation of an operation, if he or she believes it is imminently hazardous and constitutes a threat to safety and health. At the very least, we believe such authority should only be given to a majority of the employee-employer advocates and most preferably to a committee as a whole. No single person whose intentions may be good or not, informed or mis-informed, should be permitted to shut-down an entire facility outside of the existing structures of authority.

* Section 42 of the Act calls for creation of a 30-member Hazard Prevention Arbitration Board, designed to resolve tie votes among members of HPCs, to be appointed by the Governor. Members would receive $250 per day for arbitration services and HPC advocates could also qualify as arbitrators. We have two problems with this section: first, we don't believe "Advocates" should be allowed to also serve as arbitrators since

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their objectivity may be questioned, and it could add substantially to the 16 to 22 hours a month that they could, under the act, take off from the job, and second, $250 a day seems to be excessively generous compensation on top of a full salary.

* We question the advisability of allowing Hazard Prevention Committees to apply for state-funded technical assistance grants to aid in conducting inspections when the training and retaining of HPC experts is already being paid for by their employers. It appears to be nothing more than a superfluous and needlessly expensive provision that might be susceptible to random and calculated abuse. Funding should be provided either by the state or the employer, not by both.

* We are concerned that the schedule of fines and penalties provided for under Section 48 is exorbitant and almost extortionary. Levying fines of $2,500, $4,000 and $10,000 per day for violations that could involve nothing more than administrative oversight or bookkeeping errors are not justified.

* Finally, this legislation appropriates only slightly more than $1.5 million to finance its multiple and diverse functions -- a large enough amount considering New Jersey's fiscal crunch, but impossibly small considering the broad scope of the bill.

As noted earlier, the members of the NJ Society for Environmental, Economic Development enthusiastically support efforts to provide both a safe workplace and living space for all our residents. Many of our members played key roles in forging the strongest Right-To-Know Law in the nation.

But, we recognize the critical role that manufacturing plays in building and maintaining a strong economy, and we are concerned that New Jersey's manufacturing base continues to erode. Some 90 firms either shut their doors or moved operations away from New Jersey in 1989, reducing the total number of our manufacturing jobs to 659,000, the lowest total since the Great Depression and down from a high of 893,000 in 1969.

It is obvious that any legislation that affects manufacturing in our state should be judged in part by the costs and operational hardships it will impose upon factory owners and operators. New Jersey simply cannot afford a further erosion of its manufacturing base, if it hopes to remain competitive and economically viable.

S-2058/A-2832, if properly amended, may achieve real health, safety and environmental benefits, and we applaud the sponsors for that. But, we also implore them to resist the temptation for overkill and fiscal waste that exists in portions of this legislation. The intent of the legislation will be achieved, and the public and workers will be served and protected by the strengthening of Local Emergency Planning Groups and Hazard Prevention Committees.

Qualified Community Organizations, however, represent an unwarranted duplication of effort and an intrusion upon operations that is simply unacceptable to New Jersey's manufacturing sector. The creation of technical assistance grants would be an unnecessary and excessive financial burden which should not be borne by either state government or its taxpayers at this time. We urge that both provisions be stricken from the legislation.

Thank you.

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INTERNATIONAL CHEMICAL WORKERS UNION

LOCAL 155

28 ASSUNPINK BOULEVARD
TRENTON, NEW JERSEY 08619
Telephone: 586-6229

February 28, 1990

To give you some back-ground when this started.

In 1981 the Local Union requested a team of Occupational Health, Professionals from Montefiori Medical Center, Dr. David Michaels to conduct a walk through of the Plant, and make specific recommendations. The recommendations made at that time were Improvement in the Ventilation System, Personal Protective Equipment, and dust handling Procedures.

In 1983 the New Jersey State Department Of Health conducted a walk through of the Plant and reviewed company sampling data. A report was issued at that time.

Recommented improvements in the Air Sampling Program, Ventilation System, Housekeeping, Personal Protective Equipment, Provisions for work clothes, and separated lockers, (1) one for clean clothes and (1) one for work clothes, to prevent home contamination wre strongly recommendet.

On March 28, 1984 (NIOSH) the National Institute of Occupational Safety, and Health got a request from the International Chemical Workers Union. The request was assigned to the New Jersey Dept. of Health for investigation.
After delays caused by Plant access problems and a year long strike, in February and March of 1986 the investigation was done.

Chest X-Rays of employees that woeked there more than (10) years were reviewied by a NIOSH Certified B- reader.

Personal Air samplings for asbestos was conducted in the plant for these days. Bulk samples were also obtained from clothing of workers leaving the plant.

(7) seven of (20) Twenty individuals with (10) Ten years or more at the plant had consistent findings of asbestos exposure. (2) Two had asbestosis (2) Two had Pleural thickening, and (1) one hadPleural Plagues, and (2) Two had Cancer.

Personal Air sampling results indicated Asbestos Time Weight avere exposure in the range of 0.06 to 1.56 Fibers Per Cubic Centimeters and indicating significant contamination throughout the Plant on all operations. The levels documented were above the OSHA Permissible Exposure Limit of 0.2 Fibers per Cubic Centimeters.

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INTERNATIONAL CHEMICAL WORKERS UNION

LOCAL 155

28 ASSUNPINK BOULEVARD
TRENTON, NEW JERSEY 08619
Telephone: [redacted] 586-6229

On July 27, 1989, Friction Division Products received Citations for Violations and notices of failure to abate alleged violations of the OSHA act of 1970. Friction Division Products failed repeatedly to meet the requirements of OSHA Stand to Protect the worker against asbestos exposure.

After being Cited and promising, and committing to correct the Violations OSHA found. F.D.P. broke its promises and did not correct existing hazards and even allowed new hazards to occur.

F.D.P. Violated almost every Provision of OSHA Asbestos Standar In the process of threatening the Health, and the lives of its wo and there families by allowing the worker to wear street clothes laden with asbestos dust home.

(A 113 Violations)

The worker was allowed to work without Respirators even after OSHA inspection and the Union Health and Safety Committee made it known to the company that it was violating the Law.

OSHA inspectionfound Exposures up to (15) times than the Standard allowed.
In the last two (2) years we had a large turnover people who stayed 2-6 weeks would work without protecrive clothing, or respirators.
OSHA took Four (4) separate related actions.
(1) Osha Posted three (3) Imminent danger notices at the plant that put both the company and its employees on notice that they face grave threats to their health.

(2) In conjuction with the Imminent danger notices OSHA seeks Preliminary injuction to prevent F.D.P. from continuing to operate effected operations until the hazards have been correct

(3) OSHA also issued a new round of citations with penalties totaling $2.7 million for the latest violation that was found.

(4) Since the company has shown such disregard for previous enforcement actions. OSHA Filed a motion with the U.S. Court of Appeals for the Third Circuit seeking Summary Enforcement of the previous Citations.

This case marks the First Time OSHA has used Imminent dange Procedures in a A Case regarding health rather than Safety violations.
With a fine of 2 .7 million

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INTERNATIONAL CHEMICAL WORKERS UNION

LOCAL XXXX 155

28 ASSUNPINK BOULEVARD
TRENTON, NEW JERSEY 08619
Telephone: XXX-XXXX 586-6229

With this Bill (H.E.L.P.) Hazard Elimination through Local Particition Act workers will not have to work as long as Local 155 did. Where we had (2) two asbestos, Two (2) Pleural thickening and (1) one Pleural Plague Two (2) had Lung Cancer.

This is one of the reasons why we need the bill (H.E.L.P.)

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ROTTA, GLASSMAN
& HOFFMAN
PROFESSIONAL CORPORATION
COUNSELLORS AT LAW

A. It will continue to be the Company's responsibility to provide a safe and healthful workplace and to ensure compliance with all laws regarding occupational safety and health and environmental concerns.

B. The Company will recognize a Joint Health and Safety Committee consisting of three (3) members from the Union and three (3) members from management The members of the Joint Health and Safety Committee will be appointed by the Plant Manager and the Local Union President. One member from the Union and one member from the management will be appointed to serve as Co-Chairpersons of the Joint Committee.

C. The Joint Health and Safety Committee will meet at least monthly to discuss matters pertaining to Health and Safety and to make recommendations regarding training, compliance with appropriate Federal, State and local laws, and the pursuit of the healthiest and safest work environment possible.

D. The Joint Health and Safety Committee will review all current or proposed safety practices and equipment and all chemical substances to insure that the goals of the monthly meetings are best met. All documents necessary to perform this function will be provided to the Joint Committee.

E. Two (2) members of the Joint Health and Safety Committee (one from the Union and one from Management) will inspect a different work module or work area monthly and report their findings to the Shop Steward and Supervisor in that work module or work area, to the Plant Manager and the Local Union President and to the full Joint Health and Safety Committee.

F. The Union Co-Chairperson of the Joint Health and Safety Committee or his/her designee will be provided with an opportunity to inspect all accident sites and to make a complete investigation upon notice that an accident has taken place.

G. The members of the Joint Health and Safety Committee will receive the opportunity for appropriate training at Company expense.

H. Union members of the Joint Health and Safety Committee will suffer no loss of earnings as a result of their participation in Health and Safety Related matters including accompanying persons performing inspections from the government or elsewhere.

ROTTA, GLASSMAN
& HOFFMAN
PROFESSIONAL CORPORATION
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75 LIVINGSTON AVENUE
ROSELAND, N. J. 07068

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I. The Union, upon request of its President, and with reasonable notice, will be permitted to bring UAW Health and Safety resource people into the plant. Any report issued shall be shared with Management.

J. Each Co-Chairperson of the Committee will be empowered to shut down any operation, machine, or process that is deemed unsafe or hazardous. In the event an employee believes an unsafe or hazardous condition exists and his supervisor disagrees, he/she may notify one of the co-chairmen for the purpose of making the final determination as to whether the work can be continued.

K. The Union Co-Chairperson will be paid at the Group Leader rate while performing the duties of his office. The Union Co-Chairman will be appointed by the President of the Union and must be acceptable to the Management.

L. In addition to their responsibilities in connection with the Committee, the Co-Chairperson shall also be required to pre-review the introduction of chemicals or other such substances into the plant and to perform the duties as set forth in the attachment hereto (Exhibit A).

[redacted]

"Exhibit A"

Insure the safe handling, storage, use and disposal of all chemicals and hazardous waste within the plant.

Prepare and maintain in an organized manner all hazardous waste documents and records, and to review, inspect, log and update these records on a daily, weekly, monthly and yearly basis.

Maintain, update and review all material safety data sheets (MSDS) on all plantwide chemicals.

Insure that all chemicals, hazardous waste and empty containers in the plant are received, handled, stored, labeled, used, packed and disposed of in a proper and safe manner.

Also on a daily basis, inspect, maintain, repair, calibrate or replace equipment in the plating room and environmental room as needed. Maintain, order and test all chemicals in the plating room and environmental room on a daily basis to insure safe and proper operation and to dispose of all used, old and contaminated hazardous material from the plating operation.

Handle, treat, test and neutralize all hazardous materials, sludges and rinse water entering the environmental room on a daily basis, and that the effulent meets all local, DEP and EPA regulations, and as required by the Company, attend and complete hazardous waste seminars, courses on waste management and waste treatment classes.

The above duties are in no way to be construed to mean that the Union or its appointed representative have assumed the responsibility for assuring the Company's compliance with the laws governing occupational or environmental matters. This responsibility shall remain with the Company as set forth in Section A of this paragraph. In addition, the above duties are not intended to allow management personnel to perform work traditionally reserved for bargaining unit members.

ROTTA, GLASSMAN
& HOFFMAN
PROFESSIONAL CORPORATION
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75 LIVINGSTON AVENUE
ROSELAND, N. J. 07068

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TESTIMONY OF

BILL KANE, NEW JERSEY AREA DIRECTOR

REGION 9 INTERNATIONAL UNION, UNITED AUTOMOBILE,
AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS
OF AMERICA

BEFORE

NEW JERSEY JOINT
SENATE AND ASSEMBLY
ENVIRONMENTAL COMMITTEES

WEDNESDAY, FEBRUARY 28, 1990

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GOOD EVENING, MY NAME IS BILL KANE. I AM THE NEW JERSEY AREA DIRECTOR FOR THE UNITED AUTO WORKERS UNION. MY UNION REPRESENTS WORKERS IN OVER 150 WORK SITES IN THE STATE OF NEW JERSEY. WE HAVE APPROXIMATELY 20,000 ACTIVE MEMBERS IN THE STATE AND THE LARGEST GROUP OF UAW RETIREES IN THE COUNTRY OUTSIDE OF THE STATE OF MICHIGAN - OVER 10,000. I APPRECIATE THE OPPORTUNITY TO TESTIFY TODAY AND APPRECIATE THE INTRODUCTION OF A BILL THAT, IN MY OPINION, REPRESENTS THE COMMON SENSE APPROACH TO SOLVING ENVIRONMENTAL PROBLEMS IN OUR STATE.

I TESTIFY IN SUPPORT OF S.2058/A.2832, THE HELP BILL, BECAUSE IT REPRESENTS TO US A PRINCIPLE THAT WE HAVE FOUND TO BE TRUE FOR A LONG TIME. WORKERS AND CONCERNED CITIZENS ARE THE BEST PEOPLE TO EMPOWER TO CORRECT THE PROBLEMS POSED BY TOXICS AND THE UNHEALTHFUL AND UNSAFE CONDITIONS THAT TOXICS AND OTHER HAZARDS PRESENT. WE HAVE KNOWN FOR YEARS THAT A SYSTEM OF PROTECTION THAT DEPENDS ON POLITICAL APPOINTEES FOR ITS STRENGTH OF ENFORCEMENT IS NOT A VERY EFFECTIVE WAY TO PROTECT WORKERS' LIVES AND THE PRECIOUS ENVIRONMENT. WE KNOW THAT OSHA DOES NOT DO THE JOB FOR WORKERS AND EPA AND DEP DO NOT DO THE JOB OF PROPERLY PROTECTING THE ENVIRONMENT. I'M NOT GOING TO PRESENT A POLITICAL DEBATE ABOUT WHAT I BELIEVE ARE THE REASONS. THE FACTS SPEAK FOR THEMSELVES.

WHAT I WOULD LIKE TO DO IS TALK ABOUT THE CONCEPT OF HELP AND WHY I THINK IT WILL WORK.

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YOU WILL HEAR FROM MR. SOLECKI ABOUT THE SITUATION IN HIS PLANT AND HOW THE CONTRACT LANGUAGE IN FORCE BETWEEN HIS LOCAL UNION AND HIS EMPLOYER IS WORKING. I COULD HAVE ASKED ANY NUMBER OF HEALTH AND SAFETY COMMITTEE PERSONS TO ATTEND THIS HEARING TO TELL YOU ABOUT THE PROGRAMS IN PLACE AT THE LARGER EMPLOYERS SUCH AS GENERAL MOTORS, FORD OR CHRYSLER. IN THOSE CONTRACTS, WE HAVE JOINT PROGRAMS FOR HEALTH AND SAFETY THAT ARE QUITE SOPHISTICATED AND WELL FUNDED. A FOUR CENT AN HOUR NEGOTIATED COST HAS BEEN DEVOTED TO HEALTH AND SAFETY PROGRAMS WITH THOSE EMPLOYERS, WITH A RESULT THAT IS PHENOMENAL IN PROVIDING A BROAD PROGRAM OF EDUCATION TRAINING AND ENFORCEMENT SUCH AS COMPUTERIZED RIGHT-TO-KNOW INFORMATION AND OSHA REPORTING AVAILABLE TO WORKERS AT THE TOUCH OF A BUTTON, NATIONAL TRAINING PROGRAMS ON A LARGE VARIETY OF SUBJECTS FROM ERGONOMICS TO ENVIRONMENTAL PROTECTION AND MUCH, MUCH MORE. WE HAVE PROVEN THAT WHEN THE ISSUE OF HEALTH, SAFETY AND THE ENVIRONMENT ARE PAID THE PROPER ATTENTION TO SUCCESS CAN BE HAD WITHOUT THE NEED TO RELY ON GOVERNMENT AGENCIES HAVING STRIPPED DOWN BUDGETS. WE WOULD NOT HAVE NEEDED OSHA OR EPA IF OWNERS HAD BEEN MORE RESPONSIBLE. OUR PROGRAMS IN THE BIG THREE ONLY CAME ABOUT BECAUSE OF THE BARGAINING STRENGTH OF OUR UNION IN THE AUTO SECTOR, NOT BECAUSE THOSE EMPLOYERS SOMEHOW BECAME ENLIGHTENED. ALTHOUGH NOW THEY HAVE SEEN THAT OUR ARGUMENT OF MANY YEARS THAT EMPOWERING THE WORKER IS NOT DETRIMENTAL TO THE BUSINESS, IN FACT IT IS HELPFUL.

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THE SITUATION AT ROWE INTERNATIONAL IS NOT ONE OF AN EMPLOYER AGREEING TO A CONTRACT PROPOSAL BECAUSE OF THE THREAT OF GREAT BARGAINING STRENGTH BEING WIELDED BY THE UNION. THE SITUATION AT ROWE IS ONE OF A MANAGEMENT THAT UNDERSTOOD THAT IT WAS IN THE BEST INTEREST OF ALL CONCERNED FOR THE UNION COMMITTEE PERSON TO HAVE THE POWER THAT MR. SOLECKI AND HIS COMMITTEE HAVE. MR. SOLECKI HAS VETO POWER OVER ANY CHEMICAL BROUGHT INTO THE PLANT. UNCONDITIONALLY. HE ALSO HAS THE POWER TO SHUT DOWN ANY OPERATION THAT HE FEELS IS UNSAFE OR UNHEALTHFUL TO HIS CONSTITUENTS OR TO THE SURROUNDING COMMUNITY AND ITS ENVIRONMENT. HE HASN'T FLAGRANTLY USED HIS POWER TO FORCE HIS EMPLOYER INTO UNCOMPROMISING POSITIONS. THE COST OF DOING BUSINESS AT HIS PLANT HAS NOT GONE UP BECAUSE OF HIS EFFORTS. AND HIS PLANT HAS NOT SHUT DOWN. WHAT HAS HAPPENED IS THAT HE HAS HELPED MANAGEMENT TO LEARN THAT HE AND HIS COMMITTEE CARE JUST AS MUCH ABOUT THE FINANCIAL VIABILITY OF THE BUSINESS AS THEY DO, AND THAT A WELL RUN PROGRAM OF WORKERS' HEALTH AND SAFETY AND ENVIRONMENTAL CONCERN IS A PROFITABLE ENTERPRIZE IN THE LONG RUN IN ADDITION TO ITS OBVIOUS BENEFITS. THEY DID THAT AT ROWE WITHOUT THE LUXURY OF MASSIVE AMOUNTS OF NEGOTIATED FUNDS. THEY DID IT WITH VERY LITTLE MONEY AND A WHOLE LOT OF COMMITMENT AND INTEGRITY.

IF YOU WERE TO VISIT MR. SOLECKI'S PLANT HE WOULD PROBABLY ATTEMPT TO GET YOU TO DRINK THE WATER FROM HIS WASTE TREATMENT SYSTEM. I SAY HIS SYSTEM BECAUSE HE ACTS AS IF THE SYSTEM THAT

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TAKES PAINT AND SOLVENT POLLUTED WASTE AND CONVERTS IT TO CLEAR WATER BELONGS TO HIM PERSONALLY.

HE HASN'T BEEN SUCCESSFUL IN GETTING ME TO DRINK ANY OF THE WATER BUT I WOULD WAGER THAT IT MAY BE CLEANER THAN SOME OF THE PUBLIC DRINKING SYSTEMS IN TOWNS AROUND THE STATE.

WE BELIEVE THE HELP IS NEEDED IN NEW JERSEY. WE HAVE SEEN WHAT HAPPENS WHEN WORKERS ARE EMPOWERED... WE KNOW THAT IT WORKS AND THAT THEY ARE RESPONSIBLE...

WE ALSO BELIEVE THAT THE COMMUNITY THAT LIVES IN THE VICINITY OF A WORKSITE SHOULD HAVE A SAY IN THE MATTER ALSO. I THINK THAT PEOPLE THAT THINK ABOUT IT ARE NOT VERY COMFORTABLE RELYING ON THE AGENCIES OF THE GOVERNMENT CHARGED WITH PROTECTING THEM...

THERE WILL BE MANAGEMENT PEOPLE THAT WILL TELL YOU THAT ALLOWING PEOPLE FROM THE COMMUNITY TO ENTER A WORKSITE FOR THE PURPOSE OF INSURING THAT THEIR FAMILIES WILL NOT BE IN JEOPARDY IS INSANE. THE CRY THAT THESE ENVIRONMENTAL CRAZIES ARE GOING TO SHUT US DOWN WILL PROBABLY RING LOUDLY BEFORE THIS LEGISLATION REACHES THE GOVERNOR'S DESK. WE BELIEVE THIS ON THAT ISSUE...

WE BELIEVE THAT ALLOWING PEOPLE TO ENTER A PLANT IN AN ORDERLY, RESPONSIBLE WAY, HAVING THEM WORK WITH THE WORKER

REPRESENTATIVE IN THAT WORKSITE, IF THERE IS ONE, IS MUCH BETTER THAN SOME UNINFORMED OR MISINFORMED GROUP TAKING ACTION THAT IS DIRECTLY TARGETED AT SHUTTING DOWN A FACILITY WITHOUT ANY REGARD TO THE ECONOMIC EFFECT ON THE WORKERS AND THE COMMUNITY.

THERE ARE MANY PERCEPTIONS OF THE THREE GROUPS THAT WOULD BE INVOLVED IN THE IMPLEMENTATION OF THIS BILL. LABOR, MANAGEMENT, AND COMMUNITY ACTIVISTS. SOME THINK THAT ONE GROUP THINKS ABOUT NOTHING BUT JOBS NO MATTER WHAT THE COST. SOME THINK THAT ANOTHER GROUP THINKS ABOUT NOTHING BUT A MAXIMIZATION OF PROFIT NO MATTER WHO HAS TO DIE OR BECOME DISEASED. SOME THINK THAT ONE OF THESE GROUPS CARES ONLY ABOUT TURNING THE STATE INTO A NATIONAL PARK WITH NO INDUSTRY, WITH LITTLE OR NO THOUGHT TO THE ECONOMIC EFFECTS AND THE SOCIAL EFFECTS SUCH AS DRUG ABUSE, CHILD AND SPOUSE ABUSE, MURDER AND SUICIDE THAT FOLLOW A PLANT CLOSING.

WE BELIEVE THAT BY PUTTING THESE THREE GROUPS TOGETHER, A SANER APPROACH CAN COME ABOUT AND THE ENVIRONMENT CAN BE PROTECTED IN A MANNER THAT, UP TO NOW, HAS ONLY BEEN FANTASIZED. WILL THERE BE PROBLEMS? OF COURSE THERE WILL. BELIEVE IT OR NOT THERE ARE PEOPLE IN THOSE THREE CATEGORIES THAT FIT THOSE STEREOTYPICAL DESCRIPTIONS. THOSE PROBLEMS CAN BE WORKED OUT.

I WOULD RATHER HAVE THE OPPORTUNITY TO CONVINCE A HARDNOSED MANAGER AND A HYSTERICAL CITIZEN THAT WE CAN HAVE JOBS, WE CAN

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MAKE PROFITS, AND WE CAN PROTECT THE ENVIRONMENT, IF WE APPROACH THE ISSUES CALMLY AND HONESTLY AND TOGETHER. THE HELP BILL PROVIDES THAT FORUM... WE DON'T HAVE A LOT OF TIME TO WASTE GOING AFTER EACH OTHERS JUGULAR.

WORKERS, THE FRONT LINE SOLDIERS AND THE FIRST VICTIMS OF POLLUTION ARE DYING BY THE THOUSANDS EVERY YEAR, OSHA HASN'T PUT A DENT IN THOSE STATISTICS...

OUR LAND, OUR AIR, AND OUR WATER IS ALREADY POLLUTED, MUCH OF IT BEYOND REPAIR, EPA CAN'T CORRECT THE PROBLEM...

OUR ECONOMY IS NEED OF A MAJOR OVERHAUL IN THE INDUSTRIAL SECTOR OR WE WILL BE IN DIRE STRAITS IN THE VERY NEAR FUTURE. CORPORATE AMERICA AND THE FEDERAL GOVERNMENT DON'T SEEM TO CARE IN ANY COLLECTIVE MANNER...

THIS BILL CAN'T SOLVE ALL THOSE PROBLEMS BUT IT IS A BEGINNING OF THE PROCESS THAT IS LONG OVERDUE... PEOPLE PARTICIPATING, WORKING TOGETHER.

NEW JERSEY NEEDS HELP AND I COMMEND YOU FOR BRINGING IT TO US... THANK YOU

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New Jersey Education Association 180 W. State Street P.O. Box 1211 Trenton, NJ 08607-1211 (609) 599-4561 FAX: (609) 392-6321

Testimony by Robert Broderick, associate director of government relations, on S-2058/A-2832, the Hazard Elimination Through Local Participation Act, on Feb. 28, 1990 at the Rutgers Labor Education Center, New Brunswick, N. J.

Members of the committee, thank you for this opportunity to testify on this far-ranging piece of legislation. This bill obviously has wide ramifications for all parts of our state -- except one which, in our view, should also be covered by this bill.

The definition of "covered industry" in the beginning of the bill mentions several places of employment which would be included under the act. But the definition specifically excludes facilities operated by local public school boards. This is of great interest to us.

Obviously, schools are usually not the repository of dangerous substances, and schools do not fall into the same category as plants which manufacture or are otherwise involved in the production or distribution of hazardous materials. But schools and other facilities owned and operated by school boards may in some instances be sites of hazards just as dangerous.

For instance, the definition of covered industry includes "local and interurban transit." Many school districts operate their own garages for school vehicles; some of these garages contain dozens of vehicles. Under the bill as it now stands, municipal garages would be covered, but school garages would not. Many NJEA members work in these garages. They deserve the same protection municipal or other public workers have.

The definition of covered industry also includes "paints, varnishes, and supplies." Many NJEA members are school maintenance and custodial workers, who work with these substances on a frequent, or in some cases almost daily basis. Our older schools especially need frequent painting and specialized cleanup jobs, and the substances used in these jobs are stored at school sites. Do school employees deserve less protection than workers in commercial operations?

"Covered industry" under the bill also includes "chemical and allied products, petroleum and petroleum products wholesalers"; "commercial, physical, biological research," and "testing laboratories." School laboratories in junior and senior high schools, which are not covered by the bill, usually contain

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chemicals and often perform chemical, physical or biological experiments, although admittedly not the same type of research carried on at commercial facilities. But hazards do exist, and accidents can happen.

Interestingly, county and state colleges appear to be covered under the bill, although this is unclear to us. But county vocational schools are not covered. In our view, they should be covered; they have metal or wood shops, auto mechanic shops, science labs, and other places of learning which house potentially dangerous materials (for instance, auto shops would contain petroleum products).

Are schools potentially hazardous places? Of course, we would all like to think they are completely safe. But we believe prudence should dictate that we do whatever we can to make them as safe as possible. Do school buildings contain hazardous asbestos? Many do, and we are still determining how much and the proper ways to deal with it. Do school buildings contain radon and other gases? Probably so, and we must have a strategy for dealing with it. Do schools have chemicals in storage for use with duplicating equipment and other necessary office equipment and machinery? Yes, and accidents can happen. The whole idea of this legislation is that we must prepare for catastrophes before, not after they happen. Thus, we strongly urge that the words "excluding local school boards" be deleted from page 3, lines 8-9 of the legislation.

We have another suggestion. The public membership of local emergency planning committees is outlined on page 6, and again, local school officials are left out. We believe that at least one and preferably two representatives of school districts should be included on these committees, such as a representative of school administration and an employee representative. If schools should ever have to be evacuated, a plan which takes into account the special needs of schools and children would be a necessity. We urge that the list of public members of the emergency planning committees be amended to include school district and school employee representatives.

In general, NJEA supports the avowed aim of this legislation: the establishment of "a comprehensive system designed to authorize local community groups and facility-based groups to conduct cooperative environmental and public health-oriented inspections of facilities where hazards may be present or may be released into the environment." We firmly believe that children and school employees deserve the same protection that workers in private facilities enjoy, and urge this committee to include protections for children and school employees in this bill.

RB:jw
2/28/90

134X

To: The Joint New Jersey Senate and Assembly Environment Committee
From: Dee Bucciarelli, AHERA Inspector and Management Planner
Re: Testimony delivered at Public Hearing for the New Jersey H.E.L.P. legislation, New Brunswick, NJ, 2/28/90.

Honorable Members of the Committee:

My name is Dee Bucciarelli. I'm from Princeton and I'm a supporter of the H.E.L.P. legislation. I work as a consultant for the N.J. White Lung Association. I'm also a parent with children in Princeton public schools. As an AHERA Inspector and Management Planner, I can speak specifically about the limitations of the AHERA law in allowing the involvement of parents and school personnel in a process that guarantees safe school buildings. I will use my experience with Princeton Public Schools as a case in point.

In one instance, in early Spring 1989, a group of concerned parents approached the School Board offering their assistance to the Board in conducting research into the qualifications of contractors and consultants hired to perform asbestos-related work. Even though the School Board, due to its numerous responsibilities, has little or no time to conduct such investigations, it has repeatedly refused to allow us to become involved at even this level. We feel that this leaves the door open for school boards to hire incompetent or unqualified contractors and consultants, thereby placing the health of our children and staff in possible jeopardy. Since the EPA has stated that as much as 75% of asbestos abatement work is not completely properly, a situation we find particularly alarming, we also requested the right to have a qualified consultant double-check, via an inspection, the work of any asbestos abatement contractor.

In another situation, in November 1989, children and staff returned to the elementary school after an asbestos abatement project had taken place during Thanksgiving break to find unusual levels of dust adjacent to the asbestos removal site. This dust was suspected of containing asbestos and naturally, parents and school personnel were concerned. Parents requested the right to re-inspect the abatement areas under the guidance of a qualified inspector and were initially refused. Not until January 1990 - two months later - was a consultant brought in by the Board to double-check the removal work. A parent representative was allowed to accompany the consultant, but only because the consultant required that a parent be present. This situation does not represent the worst-case scenario in New Jersey. But nonetheless, if parents and school staff had been empowered to conduct a consultant-assisted inspection, parental fears about their children's safety could have been allayed much sooner. Furthermore, we feel that the situation could have been avoided entirely if the School Board was required by law to honor our request, as stated above, to allow us, accompanied by our consultant, to double-check any asbestos abatement work.

The AHERA law affords no remedy for either of the above situations. AHERA does not provide for parental and staff involvement; it is merely a notification law.

Children cannot speak for themselves. As parents we must be their representatives. We and our children, and other building occupants are the ones who must live with the consequences of improperly conducted asbestos remediation and maintenance activities. We must have a law that truly protects our children's health and empowers people at the grass-roots level - those whose health is on the line - to participate in a cooperative manner with school boards, in a process that guarantees our children and staff a safe learning and work environment.

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This testimony is being presented by the Chemical and Industrial Union Local 12, of the International Brotherhood of Dupont Workers. We represent 109 workers at the Dupont Repauno plant in Gibbstown, New Jersey.

We would like this testimony to be entered into the record of the joint Senate and Assembly Hearings on the New Jersey Hazard Elimination through Local Participation Act. This proposed legislation would greatly benefit workers and communities across the State, and our Union supports the proposed bill.

We would particularly like to comment on the specific provision in the bill which speaks to the workplace Hazard Prevention Committee having the right to review the resumes, interview, and comment on prospective hazard prevention professionals (including physicians) prior to hire. It is essential that these professionals have both professional and practical experience in occupational health. Without this knowledge, doctors, nurses, and others who are hired by the company cannot make realistic decisions about the health and safety of workers at any given plant.

In our Union, we have recently grieved two employee firings, both of which involved a health professional making an incorrect decision about whether these two injured workers could return to work. Because neither the doctor or nurse knew the nature of either job, they released these workers to go back to work before the

workers were healed enough to perform their duties. Both workers were fired because of this. For one worker, we were able to win their job back; the other case is still pending.

The Hazard Prevention Committee, if given the right to review the resumes and interview a prospective health professional could very easily determine who would and would not be qualified for the position. By hiring the right person, both the company and the workers would benefit.

It is also important for the Hazard Prevention Committee to review industrial hygiene and medical testing plans before they are started. The Committee needs to be able to ensure that the plans are realistic and are going to be undertaken by qualified professionals that have experience in occupational health and safety. They also need to be able to be included in the decision making regarding how the results of these surveys will be used and how workers will be informed of any results. Our Local has just completed a medical screening for asbestos related disease, which we set-up and paid for from the Union. We are quite familiar with the planning that needs to go into a program like this and strongly believe that only with worker input can any medical testing plan or industrial hygiene survey be successful.

Thank you for the opportunity to make this testimony part of the official record of this hearing.

Ben Sias, Vice-President
Chemical & Industrial
Union Local 12, IBDW

Bennie C. Sias

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New Jersey Environmental Lobby



Environmental Education Fund

Testimony before Senate and Assembly Joint
Environmental Committees re:
Hazard Elimination through
Local Participation Act S.2058
February 28, 1990

My name is Marie Curtis. I am the legislative representative for the New Jersey Environmental Lobby and we are here today to register our support for Senate bill S.2058, the so-called community right to know and act proposal. We in NJEL certainly concur with the rights of workers to operate in as safe an environment as possible and with the necessity for all members of any community to know and understand the hazards presented by the actions of individual members. Conceptually we endorse the bill.

NJEL is, however, concerned with the triple tiered inspection authorizations. We question whether empowering LEPCs and /or combining them with the community activists might not be a less threatening proposal to small businesses. We have a committee looking at possible improvements, and if we have any recommendations for amendment or new wording, we shall certainly get the information to you.

Our primary concern here is that the impact of the bill be positive. We want to see a partnership emerge that will not only reassure neighbors and employees of facilities that risks are minimized, but will also provide additional expertise and suggestions for improvements and cost effective techniques for business. If the business community stands to gain, then compliance will be much easier to obtain.

Perhaps, indeed, we are "splitting hairs," but the wording of such a measure can encourage cooperation or can promote an adversarial situation. We firmly believe that an emphasis on community cooperation, projecting a desire to assist in solutions, will be more productive in the long run. That desire is certainly there in this legislation, but it needs stronger articulation. Again, we hope to get back to you with suggested wording.

S.2058 could be a first step in developing an environmental safety net for us all. We support the bill.

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New Jersey State
Firemen's Mutual Benevolent Association
1544 IRVING STREET, RAHWAY, NEW JERSEY 07065-4089

(1-201) 499-9250
FAX (1-201) 499-9633

WILLIAM F. FLYNN
PRESIDENT

POSITION STATEMENT IN SUPPORT OF
"HAZARDOUS ELIMINATION THROUGH LOCAL PARTICIPATION ACT"
(HELP) SENATE BILL 2058

THE NEW JERSEY STATE F.M.B.A. SUPPORTS S-2058, HAZARDOUS ELIMINATION THROUGH PARTICIPATION ACT (HELP).

AS THE REPRESENTATIVE OF OVER 5,000 ACTIVE AND RETIRED FIREFIGHTERS IN NEW JERSEY, WE HAVE SEEN THE GROWTH OF CHEMICAL PROCESSING AND CHEMICAL STORAGE IN VARIOUS TYPES OF OCCUPANCIES. MANY OF THESE OCCUPANCIES ARE REQUIRED TO BE INSPECTED AT LEAST ONCE A YEAR BUT IN REALITY, DUE TO THE SHORTAGE OF LICENSED PERSONNEL, THIS CANNOT ALWAYS BE ACCOMPLISHED.

FOR THIS REASON, IT IS NECESSARY THAT THE PUBLIC LOCATED IN AREAS AROUND A FACILITY BE GIVEN THE RIGHT TO ENTER AND INSPECT THOSE FACILITIES. THIS ACTION WILL ASSIST IN MAINTAINING A HEALTHY ENVIRONMENT FOR THE CITIZENS OF A COMMUNITY AND, THEREBY, ASSIST IN SAFEGUARDING THE LOCAL FIREFIGHTERS WHO MAY HAVE TO RESPOND TO AND CONTROL FIRES IN THOSE BUILDINGS.

THE FIRE SERVICE CANNOT KEEP A CONSTANT EYE ON THE ACTIVITIES OF THE CHEMICAL INDUSTRY DUE TO CONTINUED CUTBACKS OF FIREFIGHTING PERSONNEL IN THE LAST 15 YEARS. THEREFORE, WE LOOK TO THE PASSAGE OF THIS LEGISLATION TO HAVE CITIZEN GROUPS HELP SERVE AS OUR EYES AND EARS.

ANY INSPECTION OF A CHEMICAL FACILITY IS A SAFEGUARD FOR FIREFIGHTERS WHO MAY BE CALLED TO THE SITE DURING AN EMERGENCY.

THE NEW JERSEY STATE F.M.B.A. STRONGLY SUPPORTS S-2058.

William F. F.

FEBRUARY 15, 1990

WILLIAM F. FLYNN
PRESIDENT

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February 28, 1990 Public Hearing New Brunswick, NJ

Hazard Elimination through Local Participation Act (S2058/A2833)

Testimony of Richard A. Youngstrom MS, MS(IH)
Certified Industrial Hygienist, Certified Safety Professional
18 Greenview Avenue
Jamaica Plain, MA 02130

Over the last 15 years I have conducted more than 400 inspections of various workplaces in my capacity as an OSHA Compliance Officer; consultant to labor, management and community groups; and coordinator of a union based health and safety program. This has included over the last 9 years approximately 20 inspections for and with community groups around the country concerned about hazards from workplaces in their neighborhoods.

This experience leads me to support without reservation the proposed HELP Act. I believe it is necessary, does not duplicate existing inspection/enforcement functions of state and federal agencies, and will not have an adverse impact on industry in New Jersey.

Although all sides of the issue will point to statistics to show what has or has not happened, we should not lose sight of the issue of prevention. Accidents and exposures will occur, but our goal must be a policy that "all accidents are preventable" and "one victim is too many." The inspection, as detailed in the HELP Act, is a process that looks for trouble and attempts to uncover potential hazards to those inside and outside the workplace so that preventive <u>action</u> can be taken <u>before</u> there are victims. It may not be newsworthy or exciting to declare that nothing happened today, but that is our goal.

Industry has enjoyed a privileged position in our society where workplaces have private property rights and there is little or no real control over the use of our air, water and land. The fragmented, uncoordinated and underfunded efforts of regulators have not been and will never be enough. The "end of pipe" regulatory approach has increased business costs without solving the basic problems associated with the use, storage and disposal of hazardous materials.

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Since government cannot and industry will not voluntarily solve the problem, we need a new approach. The HELP Act not only goes to the workplace as the source of the problem but also recognizes the connections between the three major areas of concern: occupational hazards inside the workplace, the environmental and safety concerns of the community outside the workplace, and the need for effective emergency response. This "multi-media" approach to the problem is very important.

This legislation sets the stage not for more complaints from industry about onerous regulations, but for reasonable and cooperative negotiations between all interested and involved parties at the local level. In the community inspections I have performed, management was initially opposed to and suspicious of a community or neighborhood inspection. In almost all cases, after the inspections management felt that the process had been fair, reasonable and beneficial. This was true for Dynasil and Certain Teed inspections in New Jersey, as well as others in Massachusetts and California where prevention-oriented demands up to and including relocation out of an inappropriate residential location were proposed, negotiated and accepted by company officials. I feel confident that reasonable employers will see this legislation as an opportunity to establish a good neighbor relationship with the local community in which they must coexist.

The world is changing and our society is being held up as a model for others. We must also change. Democracy requires that those members of society who may be harmed by the use or misuse of hazardous materials have a voice in how those materials are handled. I commend those who drafted and introduced this legislation for their leadership in proposing and encouraging this democratic process for New Jersey citizens, which will serve as a model for others around the country.

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Legislative Viewpoint

NEW JERSEY STATE LEAGUE OF MUNICIPALITIES
407 W. STATE ST., TRENTON, NJ 08618
609-695-3481 FAX 609-695-0151

TO: Members of the Assembly Energy and Environment Committee and the Senate Environmental Quality Committee

FROM: William G. Dressel, Jr.
Assistant Executive Director

RE: League position statement on the "New Jersey Hazard Elimination through Local Participation Act" (A-2832/S-2058)

DATE: March 1, 1990

The League of Municipalities is opposed to this legislation, as drafted, which calls for community inspections of facilities, and monitoring of hazards in the work place through groups of union members and citizens.

Although we strongly support the stated purpose of providing a healthy and safe working environment at both public and private work sites, we believe this bill is not the answer. To establish a new layer of bureaucracy which empowers citizen and union groups to undertake highly sophisticated testing and monitoring of working conditions, is counter-productive. Qualified technical experts with the State Department of Environmental Protection already conduct frequent, unannounced inspections of facilities. In addition, most facilities in the state have an open-door policy, allowing concerned residents to tour facilities.

Most public and private facilities already have safety programs in place, involving employees. If an employer does not respond to complaints, the Occupational Safety and Health Administration (OSHA) allows workers to file unsafe condition complaints. Since all activities of the Hazard Prevention Committee would be done on company or municipal time, this would add unnecessary costs to industry and local government.

The way to achieve uniformity of enforcement is to make the State agencies more effective in enforcing the existing health and safety statutes. This legislation will transfer the State's inspection and enforcement responsibilities from the state to the local level. We question whether these various citizen groups will have the expertise and professional know how to undertake these technical and highly sophisticated testing programs. Also, we are very much concerned over the possible liability local governments may incur as a result of an improper action by one of these citizen groups.

We are very much interested in improving the health and safety of our public and private work force and we stand ready to assist your committee in exploring ways we can achieve this desired goal.

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Local 827

HACKENSACK UNIT 1

International Brotherhood of Electrical Workers AFL CIO

11 West Passaic Street, Rochelle Park, New Jersey 07662
(201) 368-0827 (201) 368-1132

Thomas P. Moran
Delegate

February 28, 1990

Dear Sirs:

As the Delegate for over nine thousand telephone workers of New Jersey Bell I urge you to support H E L P (HAZARD ELIMINATION THROUGH LOCAL PARTICIPATION ACT).

Many of our union members are in and out of facilities that use toxic chemicals. In many cases their safety is in question.

Through local participation and workers on sight this would give teeth to SARA, TITLE III and make life better for us all.

Thank-you for your consideration.

Sincerely,

Thomas P. Moran

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THE STATE UNIVERSITY OF NEW JERSEY
RUTGERS

Environmental Communication Research Program
A Program of the Agricultural Experiment Station
Cook College • P.O. Box 231 • New Brunswick • New Jersey 08903-0231 • 201/932-8795 • FAX: 201/932-7815

February 28, 1990

STATEMENT IN SUPPORT OF
THE NEW JERSEY HAZARD ELIMINATION THROUGH LOCAL PARTICIPATION ACT

I am Caron Chess, Associate Director of the Environmental Communication Research Program, which is based at Rutgers University. ECRP (which I don't speak for today) does research, consulting, and training about how to communicate about environmental risk. I speak today as an individual who has played a lead role in more than ten research projects in the past three years and given literally dozens of presentations to industry and government about risk communication. My background is one of having been on two sides of the fence before I ended up in academia sitting on it; I started out my career as an activist and then coordinated DEP's Right to Know program.

My clients within industry and government who are dealing with environmental risks often ask me what they can do to build trust with the public. They know that when they open their mouths the assumption often is that they aren't telling the truth. The atmosphere of mutual distrust--between the public and industries--makes it much more difficult to sit down and begin to discuss--let alone solve environmental problems.

Briefly, here are a number of ways in which I see HELP as potentially able to build trust:

1. Research conducted by social psychologists during the past 15 years suggests that people actually perceive risks as riskier if the risk is outside of their control. It is becoming quite clear that environmental risks--particularly ones tied to industrial facilities--are ones that people feel little control over. Consequently, regardless of whether the level of risk is high or small--people are apt to experience the risk as riskier because they feel helpless in the face of the risk.

HELP is one step towards giving people who are living with risks some sense that they can do something about those risks. If the legislature is concerned about helping people distinguish between the small and large risks, then you should give people a chance to see for themselves.

2. People are more apt to trust if instead of industry and government saying "trust us," industry and government say "we'll show you." Or, borrowing the lingo of the cold war--which is currently colder than the environmental scene in New Jersey--

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trust but verify. Which means: "If you want us to trust you, let us verify."

In keeping with this philosophy, I advise industrial clients to open their gates--and I applaud the HELP legislation for helping them to do that.

3. Industry in New Jersey may be doing many positive things that the public doesn't believe because no one trusts people to find out for themselves. HELP would give them that opportunity. Although industries may resist opening their gates, they should consider welcoming the opportunity to shed some light on their attempts to run environmentally safe operations.

There is a growing consensus that communication about environmental risk should be two-way, that it should involve dialogue between communities concerned about risks and industries concerned about public concern. We just finished the second year of a study looking at what representatives of constituencies in New Jersey--that is government, industry, advocates, and educators--feel the public should be told about risk and how they should be told it.

As expected, we found there was a great deal of disagreement about what people should be told about risk. What is surprising--and tied to the legislation before you--is that there is a great deal of consensus among these sometimes warring factions about <u>how</u> the public should be told--that is the process for educating the public about risk. While we didn't ask a question specific to the HELP legislation, we did find that the philosophy of industry about how to deal with the public was surprisingly progressive. The responses of the 50 industry risk communicators we surveyed indicated both strong consensus and strong agreement with these statements:

The earlier government and industry talk about a problems, the better.

In explaining risk to the public, it is wise to give as much attention to how you deal with people as to what you say about the risk.

It is wise to give as high a priority to listening to people's concerns as to providing technical information.

I think the HELP legislation operationalizes these beliefs espoused by industry and has the potential to do so in some positive ways.

Finally, I think the HELP legislation is consistent with the recommendations of The National Academy of Sciences that released a report this fall called <u>Improving Risk Communication</u> which I would like to quote from. It states: "Risk Communication can be improved only if recipients are also helped to solve their

problems at the same time." The report goes on to say that "The risk communication process can be considered successful only to the extent that it first improves or increases the base of information that decisionmakers use, be they government officials, industry managers, or individual citizens, and second satisfies those involved that they are adequately informed within the limits of available knowledge." HELP is an opportunity for the legislature to assist industry and communities to meet the NAS' definition of success.

VINCENT A. GALLAGHER

4 LONGWOOD COURT
STRATFORD, N.J. 08084
609-435-2744

Occupational Safety and Health Consultation Group

March 8, 1990

Mr. Spiros Caramlis
Environmental Section
Office of Legislative Service
State House
Trenton, New Jersey 08625

Dear Mr. Caramlis:

I presented testimony in favor of the HELP Bill on February 28, 1990 at the Rutgers Labor Education Center. Enclosed you will find a copy of my actual testimony. I had a prepared statement which was typed and distributed at the hearing. However, I changed my verbal testimony somewhat after listening to people testify on behalf of the chemical industry.

You will see from my testimony how strongly I feel about this Bill and why I feel so strongly.

Thank you for your kind consideration.

Sincerely,

Vince Gallagher

VG:ms

Enclosure

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TESTIMONY OF VINCENT A. GALLAGHER

AT THE PUBLIC HEARING OF THE

JOINT SENATE AND ASSEMBLY ENVIRONMENTAL COMMITTEES

ON THE HAZARD ELIMINATION THROUGH LOCAL PARTICIPATION ACT

February 28, 1990

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My name is Vincent Gallagher. I worked for OSHA for 12 years and performed 792 inspections. I have a Master's Degree in Occupational Safety and Health. I consult now for labor unions, lawyers, United Nations agencies in Latin America, the World Bank, governments in 5 Latin American countries and Confederations of Labor in Peru and Colombia.

Before making my prepared remarks, I would like to comment on this question of the Emperor's Clothes, that is, whether there is really a significant problem with hazardous chemical exposures and whether the manufacturers should do more.

I would like to show you some obscene, naked parts of the Dupont Company in Deepwater, New Jersey. You heard testimony from their industrial hygienist previously. Here is a glimpse behind the "veil". Incidentally, I have done some consulting for the union who represents the Dupont workers and I inspected this plant regularly when I worked for OSHA.

In 1914, Dupont went into the business of producing dyes. These dyes caused bladder cancer in Germany and they started to produce bladder cancer in Salem County, New Jersey in about 1932. Dr. Heuper, a renowned cancer researcher who then worked for Dupont, told Irené Dupont that they were beginning to see the "tip of the iceberg". He strongly suggested they control worker and community exposures. Dupont responded by removing Dr. Heuper from his field research. Dupont went on to produce dyes in the same way and caused Salem County to be the bladder cancer center of the United States. That is according to the Cancer Registries. Hundreds upon hundreds of people in Salem County today suffer from bladder cancer. Dr. Heuper went on to become an internationally renowned cancer researcher.

In the 1920's, this same Dupont plant began to produce tetraethyl lead. Workers began to suffer neurological damage - mental disorders, schizophrenia and suicide. Dupont tried to cover it up but an exposé by The Nation in about 1929 showed how they tried to keep the veil drawn snugly around these horribly injured workers.

Today I am told the soil around this plant is highly contaminated with lead. That is, throughout the entire community in proximity to this plant.

I bring up tetraethyl lead because we recently found out that hundreds of workers have recently been found to be exposed to high levels of tetraethyl lead at this plant. I helped the union get OSHA to force Dupont to deal with this problem. They had to be forced, by law, despite the horrendous history.

This same company in 1978 did not have any asbestos related disease recorded on the OSHA records when OSHA looked at their books. OSHA thought that the asbestos workers might have some asbestosis. OSHA's doctors looked at the X-rays. Although the X-rays showed progressive abnormalities existed among hundreds of workers, not a soul was told by the Dupont physician that they had a lung condition related to the job. None were told they had a problem at all. OSHA revealed the medical coverup. Today, over 400 workers have either sued Dupont or their doctor. I understand 200 more workers have recently been found to have lung abnormalities related to asbestos exposure.

Dupont is one of the Emperors who, we are told, is clad so elegantly. Hundreds of bladder cancers, hundreds of lead poisonings, hundreds of asbestos victims - all uncovered by others - with the essential help of the workers.

This same company today does not recognize the union's safety and health committee. This same company has the gall to come here today to argue against this Bill - which is the worker's greatest hope. What we are pleading for is simply fundamental.

OSHA and the National Safety Council have long recognized occupational safety and health committees as fundamental to an occupational safety and health program. The United Nations in 1949 and again in 1981, made strong recommendations to governments throughout the world to require occupational safety and health committees by law. They called for committees with responsibilities very similar to the functions of the Hazard Prevention Committees in this Bill. They state and I quote: "Workers and their representatives have an indispensable role to play in the prevention of occupational accidents and disease."

The United Nations says national laws such as OSHA "cannot provide a complete and effective solution for in-plant problems."

Incidentally, governments which have passed laws requiring occupational safety and health committees are West Germany, England, Sweden, Finland, Canada, France, Spain and others. Even Latin American countries such as Colombia, Peru, Bolivia, Uruguay and Mexico have safety and health committees required by law.

I agree with the United Nations. OSHA's safety standards are, to a large extent, obsolete. They were adopted from American National Standards which were promulgated before 1970. That is, from National Consensus Standards which, by their nature, are minimal, economically and politically compromised and necessarily lagging behind the latest developments in safety technology. Unfortunately, they are the maximum required by OSHA.

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The majority of safety hazards and safety problems in a workplace are simply not covered by OSHA standards. Since 1985, I have investigated over 200 serious accidents. Most of the causal factors in these accidents did not violate OSHA standards.

Regarding health hazards, OSHA has standards on about 500 toxic chemicals. There are over 50,000 different toxic chemicals in use in our factories.

Even if OSHA had standards for all hazards, with about 36 safety specialists and 28 industrial hygienists, employers in New Jersey can wait about 50 years on average to see an OSHA inspector.

OSHA addresses the symptoms of the problem - not the root causes. The root causes lie within the management system. That is, within the relationships between the people in the factory. Time and time again, I have seen citations issued, conditions corrected, only to recur in a short time because there was no corresponding change within the values of the management system. This Bill goes toward making systemic rather than symptomatic changes.

OSHA can be expected to see the symptoms of a problem if it happens to exist when the inspector passes through. They can be expected to apply a standard if one exists and to issue a penalty if the circumstances warrant it. OSHA inspectors do not live with the hazard. They are not affected by the hazard. OSHA does not know the people who suffer the injury and the disease.

What OSHA does is important and necessary. But even if they doubled or tripled their staff, they still would be able to provide only a minor presence in any particular workplace.

If I have learned anything in my 20 years in occupational safety and health, it is that the people exposed to the hazard have an extremely important role to play in the hazard control process. I have learned much more about hazards and their control from the people exposed to the hazard than any other source. This Bill provides a mechanism for inclusion and empowerment that goes well beyond OSHA's very limited role of enforcement and attempts to make positive systemic changes.

Next month, next year, three years from now or five years from now, everyone here today will read of an explosion, fire, toxic release or evacuation caused by an accident not far from your home. We now have the opportunity to play a role in the prevention of these accidents - to be on the right side of this question.

For the sake of the people who will suffer paraplegia, quadriplegia, amputations, lung disease, cancer, brain damage, liver and kidney damage, lead poisoning and most of all the burn victims - for the sake of the children who will suffer birth defects from teratogens and mutagens, for the lost lives, dreams and hopes due to spontaneous abortions, for the sake of your children and grandchildren, for God's sake, be on the right side of this question.

In this place, of all places, this corridor known as cancer alley - at this time, of all times, when governments throughout the world are allowing the people to participate in democratic processes - do not miss the opportunity to be able to say, when you read of the next explosion, that you played a positive role in the prevention of needless suffering by allowing the people to participate.

In this great democracy of ours, it is fundamental that the people have a right to participate in their own destiny. Please do not deny us this right. Thank you.

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STATEMENT OF THE

NEW JERSEY PETROLEUM COUNCIL

ON

NEW JERSEY HAZARD ELIMINATION

THROUGH LOCAL PARTICIPATION ACT

A-2832/S-2058

WEDNESDAY, FEBRUARY 28, 1990

RUTGERS LABOR EDUCATION CENTER, NEW BRUNSWICK

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Mr. Chairman, members of the Committee, the member companies of the New Jersey Petroleum Council involved in refining, marketing, transportation and research in New Jersey share the general objective of promoting a cooperative approach between management, workers and the community to prevent worker and public exposure to hazardous substances. The existing programs of state and federal regulatory agencies, as well as practices within a given company, achieve these objectives. The goals stated in the legislation before us today are not only unneccessary, but duplicative, and may obviate the efforts to accomplish the aims of the the existing programs of state and federal agencies and corporate policies.

The broad concepts raised in this legislation go well beyond the immediate concerns of the petroleum industry in New Jersey and extend to and are universal for all manufacturers presently operating in this state. Examples of the provisions which we believe support our conclusion are:

. The bill would allow workers and community representatives to inspect facilities for hazardous conditions and in some cases to shut down the facility. Such inspections are currently conducted by OSHA to insure safe working conditions and by the New Jersey Department of Environmental Protection to protect the community from hazardous emissions with existing regulatory authority such as the Toxic Catastrophe Prevention Act. Both agencies have the necessary enforcement power to accomplish their goal. Providing members of the Hazard Prevention Committees with the power to inspect and ultimately shut down a facility could

actually decrease safety and environmental protection as refineries are highly integrated facilities. Shut downs occur as major decision determines on the basis of demonstrable facts, made by management, only for input from the appropriate supervisors. For example, despite good intentions closing a wring valve at the wrong time, could endanger the lives and environmental quality of the community the committee is attempting to serve. The shut down of primary units in a petroleum refinery can cost millions of dollars and often involve a week or more to re-start. During this start up period temperatures, pressures and product flow must be in the proper balance before the refinery is on line again. It is important to underscore that during this shut down start-up period there is significantly increased attention to safety considerations.

. The bill proposes that the membership of Local Emergency Planning Committees (LEPC) include additional representatives from specified groups. A review of existing LEPC's will confirm that they contain a diverse membership from the represented community. Mandating certain categories of public representatives such as environmental advocacy groups, labor organizations, and the broadcast and print media for every community will actually weaken the LEPC's ability to function effectively for the agendas of non-scientific groups may be based other than environmental or safety concerns. Each community should be allowed to determine the appropriate members for its LEPC. This is a local prerogative which should remain as such.

. The New Jersey Petroleum Council is particularly concerned

that given the inherent safety and operating characteristics of petroleum processing -- the provisions contained in this legislation are infeasible, unworkable and potentially dangerous. Firefighting and security functions often fall on trained process workers within industry. Under current corporate practice, if a condition arises which is deemed to be unsafe a worker is expected to communicate it to management. If it is truly an imminent hazard they are trained in how to respond. If it is not truly an imminent hazard there is no reason they cannot notify appropriate authorities from a wide range of federal agencies such as OSHA, EPA or the State such as DEP or State Police, or local agencies such as firefighters or health officials at their first opportunity. Management is responsible for addressing all hazards imminent or non-imminent. Management cannot afford to overrule or ignore legitimate concerns raised by workers.

. The proposal ignores the active effort by the petroleum industry to establish comprehensive, company wide safety programs that include extensive participation of employees at all levels which we believe precludes the need for the Hazard Protection Committees proposed in this legislation. In today's climate of regulation and litigation the industry has a vast interest in taking specific actions to avoid hazards to workers and the community. Particularly in complex oil processing equipment, such inspections, by appropriate industry officials, are integral to meeting the high standards set by industry. The American Petroleum Institute has published API bulletin 750 which details standard practices on The Management of Process Hazard.

Interpretations of this multi-factorial and complex data will not be enhanced by intermittent community attempts at random observations.

. As the composition of these proposed local groups are unlikely to provide the technical expertise necessary to identify potential hazards or suggest safer practice, the benefit of in-plant inspection by these groups are unlikely to justify the inspections authorized by this bill. It would be more productive to review the basic functions delegated to appropriate governmental agencies and enhance their respective operations thus resulting in closer coordination between these existing diverse federal, state and local agencies.

Finally, let it be clear that the petroleum industry is strongly committed to ensuring safe operations for the benefit of their workers and the surrounding communities. We believe that this policy represents not only sound public policy but reaffirms the sound interests of corporate safety, environmental and economic considerations. We are available to participate in a review of the existing governmental agencies efforts to enhance these mutual goals.

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The following comments are offered to supplement the stated policy consideration which form the overall objections to the proposed legislation as contained on our testimony of February 28, 1990.

I. Comments on the Provisions Regarding Local Emergency Planning Committees

1). The mandated composition of the LEPC in Section 4 (one industry representative out of sixteen) appears to be unwieldy and lacks sufficient industry representation. This is particularly true since individual industries may require different types of planning response. The flexibility of having several industry representatives would provide the greatest level of expertise of determining an appropriate response plan. That provision is reflected in Section 301 of SARA Title III.

2). Section 4(f) should be amended to include "covered facilities or owner operators" who can initiate actions to fill vacant posts in the LEPC.

3). The requirement of an individual facility Emergency Repsonse Plan (ERP) in Section 6(b) may be

redundant of a completed Local Emergency Response Plan.

4). In section 6(c) the distinction between "Emergency Response Plan" and "Hazard Analysis" is not clear. Furthermore, the second sentence concerning the notice of "relevant changes...as such are expected to occur" at a facility is unclear, and too broad since relevant changes may not always be significant enough to require a change in an emergency response plan (ERP).

5). The seven day deadline for delivery of any additional documents in Setion 6(d) is arbitrary and inflexible and should be removed.

6). In Section 6(e), the LEPC should not be able to direct the owner or operator of a facility to revise its emergency plan without "cause shown." Furthermore, the State Emergency Response Commission (SERC) established by Section 301 of Title III should be consulted before a facility is required to revise its ERP.

7). Section 7 should be reconciled with the Title III authority given to the SERC and to the enforcement powers already given to the State Department of

Environmental Protection.

8). Regarding Section 8(a), there is not sound policy reason for allowing inspection by laymen. Section 312(f) of SARA Title III designating inspection authority to fire department personnel is based on sound policy considerations. Since many industrial settings can be dangerous, unless the individuals are properly trained, the more people involved in inspections, the more people are at risk. Given the benefit derived from having laymen inspect facilities is minimal, this risk is significant.

9.) In Section 8(b), the LEPC should be allowed to request subpoenas not issue them which should be a judicial function.

10.) Section 8(d) permits an LEPC to conduct an inspection without prior notification to the facility owner or operator. Facility owners and operators should be given notice and a right to decline inspection for just cause. Unannounced inspections by untrained parties create proprietary information concerns and residual safety issues at a facility.

11.) In Section 8(e), the plant manager should have

final authority before LEPC members are allowed in a plant following emergency as the manager and staff are in the best position to evaluate the nature of residual risks and must assume ultimate responsibility for their presence.

12.) The trade secret protections of Section 9(a) are absolutely inadequate. Industry must make a stringent showing in order to have information considered a trade secret under Section 322 of SARA Title III or under the OSHA Act. Therefore, information regading trade secrets should not be made vulnerable to lay understanding of legal constraints. Furthermore, proprietary information is not sufficiently protected with resulting punishment for violations. This penalty is not commensurate to the actual monetary damages a facility may suffer. For example, Section 9(a) does not provide protections equivalent to those envisioned by Title III and the OSHA Act. The Civil liability of individual inspectors would have to be explicit and industry must be allowed to pursue remedies against individual violators.

13.) The qualified waiver of liability in Section 9(b) is unworkable. This clause highlights the risk inherent in allowing non-governmental

personnel to inspect these facilities and the difficulty in appropriately training and equiping volunteers for all the contingencies they may encounter.

14.) Section 9(c) is objectionable in so far as the sampling/test equipment may be disruptive to or cause hazards in the workplace such as static electricity or sources of ignition. A further objection is that the testing and photography must be done in such a manner as to protect trade secrets, premises security and emergency evacuation procedures. The LEPC should provide advance notice of plans to sample and of the testing methods used. Only state or federally approved sampling and testing methods and protocols should be used.

15.) With regard to Section 9(d), the LEPC should not be allowed to accompany state or federal inspectors when they have access to any reports generated by said inspections from these governmental agencies.

16.) The source of funding for this program is completely unfair. Industry will be required to pay to develop the ERP's and is now being asked to pay to review the same ERP's. This is an expense more appropriately borne by the public at large

through general revenues.

II. Objections to the Sections on Qualified Community Organizations (QCO), Sec. 11 and following.

1.) Many of the objections raised to the LEPC's apply even more strongly to the QCO's. Obviously, the more laymen involved in inspecting facilities, the greater the chance of someone being injured. Given that QCO's bring very little expertise and insight into the prevention of hazardous released, this risk is not warranted. An unexperienced person who engages in inspection should be denied access by the facility owner or operator.

2.) While it is not clear from the bill, it appears that while LEPC's require a warrant before inspections, QCO's do not. Since a QCO is a state governmental instrumentality, this may be considered an unreasonable search and seizure violation of the Fourth Amendment.

3.) Written "agreements" on release prevention (Section 22) are aimed at enforcing pollution control, not community right to know, and therefore exceed the proper scope of this bill. This function should fall under the Department of Environmental Protection with full notice and comment

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rulemakings. "Private" agreements may violate the Administrative Procedures Act as they deprive other interested parties of an opportunity to participate. Finally, they trench upon a whole host of federal and state statutes and regulations aimed at the very same goal.

4.) We object to Section 17(a) requirement that the owner operator must supply a QCO with "any requested documentation" within ten days of notice of a periodic inspection. The QCO should be required to justify the need and use of requested information to satisfy proprietary concerns.

III. Comments on sections on Hazard Prevention Advocates (HPA) Section 24 and following

1.) As a general observation, Hazard Prevention Advocates (HPA) are involved in the same activity as OSHA inspectors. It would be wiser therefore to review the current efforts by OSHA inspectors rather than to create Hazard Prevention Advocates. We object to the selection process of hazard prevention coordinators and advocates contained in Section 26(b).

2.) In Section 29(c), the covered owner or operator

must have the right to review and edit any information which may reveal trade secrets prior to distribution, even to government agencies.

3.) In Section 29(d), the covered owner or operator must have an opportunity to rebut any information or changes made in the minutes of the HPC and such rebuttals should become part of the public record along with the HPC minutes.

4.) Section 30(a) does not state whether the inspections are within the facility fence line. If inspectors go off premises, it must be clear they do so at their own risk.

5.) In section 30(b) the term "near misses", is not defined. This is a vague term and may ultimately prove too elusive to define.

6.) We object to requirements of 16 hours to carry out duties of Hazard Prevention Advocate. Many facilities already have joint labor management safety committees at their facilities.

7.) Employee hazard prevention training should be performed by qualified professionals conducted in agreement with facility owners and operators.

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8.) Requirements that an owner or operator must notify hazard prevention coordinators and qualified community organizations of potential hazards reasonably anticipated with new machinery or equipment and the intended methods of abatement are unnecessary. The owner or operator should be able to make improvements without notification where appropriate permits have been obtained.

9.) Section 31(b) inappropriately permits surveillance and review of company medical protocols. This full access violates medical record confidentiality by non-licensed health personnel without the appropriate release by individual employees.

10.) While it is not clear who will pay for experts hired by pursuant to Section 37(a), this cost should not be borne by industry.

11.) In many industrial settings including the petroleum industry, the shutdown notice contained in Section 40 may cause more hazards than it prevents. For this reason, the plant manager should be consulted before any shutdown decision is made. Section 40 may be duplicative as it relates to workers safety which is covered by the OSHA Act.

12.) In Section 44, if LEPC's, QCO's, and HPA's are held harmless for any actions or recommendations they make, then the covered owner or operator should avail themselves of the same protection and ne able to limit their liability for following recommendations of an LEPC, QCO, or HPA.

13.) Under Section 47(a), the maximum punishment for unreasonable actions or actions taken in bad faith by an HPA is not proportionate with the severity of the damage that may be caused to the owner or operator.

14.) The burden of proof should not be shifted upon the employer in employment actions as suggested by Section 46(e).

15.) In Section 48(b), the bill is not sufficiently explicit as to the effect is given in an administrative order. The Commission should not be allowed to order affirmative relief such as plant shutdowns without a court order.

16.) In Section 49, the term "outrageous" is not defined and provides insufficent guidance as to when punitive damages should be awarded. Furthermore,

since the fine structure in Section 48 is already penal, additional punitive damages are duplicative and excessive.

Comments on Definition

- The term "Corporation" (Page 2, line 32) is too broad and includes parties who may have little access to relevant data on day to day industrial operations.

- The term "Costs of Litigation" (p. 2, l. 36) should separate court costs and attorney's fees and make them separately awardable.

- The definition of "covered industry" (p. 2, l. 41) allows additional facilities or work sites to be included but does not allow the appropriate agencies to exempt certain facilities or reduce the frequencies of inspection.

- The definition of "Covered Owner or Operator" (p. 3, l. 17) includes a small business exemption. There is no justification for this given that it is a danger to the community and the workers. It is not the size or the work force that is relevant.

- The definition of "expert" (p. 3, l. 45) is vague and there is little guidance given to the qualifications of an expert.

- The definition of "hazard" (p. 4, l. 65) includes "potential" adverse health effects. The term potential is much too broad and needs a specific definition.

- There are problems with the term "imminent hazard." First, the phrase "suspected to... have carcinogenic, teratogenic or mutagenic effects is over inclusive and impossible to define. Second, an "imminent hazard" includes any unusual release which is independently defined to include any reportable quantity under SARA Title III. However, just because a reportable quantity is released does not mean it poses a risk to human health sufficient to trigger the emergency cessation of operations specified in this legislation. Third, since the amount of property damage may not be known until much later, the property damage of over $5,000 is a poor proxy for "imminment hazard."

- The definition of the term "unusual release" needs further clarification.

The New Jersey Petroleum Council understands the concerns of those who propose the bill, and supports the goal of promoting a safe workplace and health environment. However, the problems with this bill far outnumber any potential benefits. The goals purportedly advanced by this legislation woul dbe best served by enhancing the current mechanisms to protect employees and the environment, instead of creating an additional layer of poorly conceived and dangerous "inspections."

173x

COUNTY OF SALEM
OFFICE OF EMERGENCY MANAGEMENT
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It is my opinion, that the intent of this Bill is to involve local participation in the prevention of toxic and other hazardous threats to the health safety and environment of our communities. The effect of this Bill is to give a non-governmental entity broad powers of inspection in all types of facilities.

At the present time there are already a number of agencies responsible for the prevention and inspection of the work place, many of which were established by the Federal government as well as you, the State.

If the purpose is to have more accountability under this Bill, which I support in theory, why not take the existing agencies and give them the resources, authority and power to enforce the already established laws.

Why is it now necessary to form another agency, consisting of residents, most of whom know nothing about how industry carry out safety inspections or investigation of an incident. These people are not trained in what to look for, safety regulations, personal protection, and most would not know what a hazardous material is.

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The Emergency Management Act of 1942 specifically outlines emergency planning activities. All planning is detailed in fully Comprehensive Operating Plans, which are submitted to and approved by the State Office of Emergency Management. Annual exercises are conducted as required, which include the involvement of government officials, first responders, media, industry, and most importantly local community groups and the general public.

I support the intent of the law, but I feel those agencies that are already in place, can and will do the best job possible if given the opportunity and support of government.

It has been my experience, in dealing with industry, that they have been more than helpful in working with all the agencies that are involved with inspections and planning. Most of industry will work rather than suffer fines for noncompliance.

In Salem County, we are very fortunate in the relationship with industry, in that they provide a computer system which ties into their MSDS sheets, started a mandatory training program in conjunction with our office involving the Hazardous Materials Awareness and Operational courses, installing a siren system for community awareness in the event of an incident, involvement in the Hazardous Materials Advisory Council, participating in the Industrial Council and financial support.

175x

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NEW JERSEY BUSINESS & INDUSTRY ASSOCIATION

cc Buc English
cc Spicos
fear HELP
Fill
SKS

March 14, 1990

MAR 1 3 1990

Hon. Robert G. Smith
44 Stelton Rd.-Room 250
Piscataway NJ 08854

Dear Assemblyman Smith:

Enclosed is New Jersey Business and Industry Association's testimony concerning S-2058 and A-2832, legislation pertaining to "Hazard Elimination Through Local Participation" aka H.E.L.P.

While our testimony may be critical of S-2058 and A-2832 in its present form, we believe that it should be amended to provide statutory legitimacy to Local Emergency Planning Committees. We also believe that this legislative proposal should be limited to the guidelines provided in SARA Title III to enable a LEPC to carry out its mandate as proposed by federal legislation.

After this newly enacted law is in effect for a reasonable period of time, it should be reexamined to determine if it is achieving its objective of enabling a LEPC to plan emergency response and preparedness capabilities through better coordination and planning within the local community.

We will shortly begin to prepare our proposed amendments for your consideration.

Sincerely,

Lester Kurtz

Lester Kurtz
Vice President

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Statement

of the

New Jersey Business and Industry Association

to the

The Senate Environmental Quality Committee
and
The Assembly Energy and Environment Committee

on

S-2058 & A-2832
(Hazard Elimination Through Local Participation)

March, 1990

176x-a

New Jersey Business and Industry Association, representing 12,500 businesses that employ more than one million workers, strongly opposes the Hazard Elimination through Local Participation (H.E.L.P.) bill (S-2058 and A-2832) in its present form. This legislation would allow local community groups to conduct environmental and public health inspections of business facilities. We believe that this bill is conceptually flawed and counter-productive to effective plant safety operations. This is not an environmental bill but one dealing with fundamental labor-management issues, which should have been referred to the Labor Committee or to the State Government Committee.

The issues of workplace safety and safety committees are mandatory subjects of collective bargaining. H.E.L.P., by imposing a legislative solution to the issue of the composition and authority of employee safety committees, may violate federal labor laws. It is also in violation of the State's traditional role of neutrality in collective bargaining. We urge this committee to recognize the recent U.S. Court of Appeals decision concerning the Occupational Safety and Heath Administration pre-emption of State law pertaining to workplace safety. The Court, in effect, held that without an approved State Plan only OSHA inspectors can enforce workplace safety standards.

The H.E.L.P. bill fails to provide a rationale for the establishment of such a complex bureaucratic structure. Safety hazard inspections by unqualified groups and individuals, along with government mandated co-management programs for plant safety, are untested concepts.

177x

The members of the New Jersey business community are concerned about the full scope of the H.E.L.P. bill. We have been told that prior to the introduction of the bill, the group supporting its introduction targeted a major portion of their time at non-union facilities. Our level of concern is increased when we see that parts of this bill would allow individuals to shut down production facilities without any accountability or responsibility for their actions. The business community believes that this bill would create more problems than it would solve.

WHAT PROBLEM ARE WE TRYING TO SOLVE?

The most fundamental question that we ask about this legislation is, "What is the public policy problem that we are trying to solve?"

The findings section of the bill states that, "A crisis exists in this State as a result of hazards in the environment that emanate in the workplace — this crisis continues to exist and increase in severity despite extensive efforts to overcome it."

This statement is inaccurate. According to the National Safety Council's "Accident Facts, 1987 Edition," workplaces continue to be 20 to 30 times safer than the home. The workplace safety record continues to improve. Accidental work deaths decreased 81 percent between 1912 and 1986. Deaths in 1986 were down 7 percent from 1985. Furthermore, according to the New Jersey Department of Labor's 1988 annual report, workplace accidents and occupational disease claims during the period 1985-1988 were down almost 12 percent.

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Since New Jersey has seen a dramatic improvement in the control of industrial pollution, legislative penalties and economic incentives to reduce waste have made our waters safer and our air cleaner. Units of local government and New Jersey's business community have invested billions of dollars in pollution control, employee training and safety planning.

A strong and productive manufacturing community is vital for balanced economic growth. The products of a healthy economy have given us a society that, in 20 years, has increased its life expectancy by 4.4 years for males and 3.6 years for females.

MORE REGULATION IS NOT THE ANSWER!

In S-2058 and A-2832, we are structuring yet another level of unorganized confrontation, reporting, inspection and potential for harassment. We have reached a saturation point in overregulation. Our ability to comply is as strained as our ability to enforce. This is a period of economic downturn and budget shortfalls for both industry and government. New Jersey's sales tax revenue is down — indicating that sales are down. Corporate business tax revenues are down — indicative that corporate profits are down. Why are we creating new levels of reporting and red tape at a time when we should be rethinking how we can manage our existing regulations? Known regulatory problems such as universal labeling, right to know reporting and the Environmental Cleanup Responsibility Act (ECRA), should be given a priority review.

H.E.L.P. would require a $2 million State appropriation and would cost industry and local government millions of dollars to implement. What benefit

will New Jersey taxpayers get for this unproductive investment of capital? Can the State afford this? Will it be cost-effective?

Industry in New Jersey is regulated, inspected and required to fill out more forms than in any other State. The level of governmental control is staggering. Perhaps it is useful to restate the obvious — for the record — that government at all levels is the official arm of the community. The community's interests are being protected by the laws passed by elected representatives and enforced by inspectors employed by the community. A quick review of some examples of governmental oversight include:

1. The federal Occupational Safety and Health Act covers workplace safety and managing exposure to certain hazardous materials through the Hazard Communications Standard.
2. The Toxic Catastrophe Prevention Act (TCPA) establishes the strictest standards for permitting and inspection in the country for the use, storage and manufacture of chemicals that are "extraordinarily" hazardous.
3. Public access to information about on-site usage of "ordinary" hazardous chemicals is available through the SARA Title III reporting and the State Community Right to Know program.
4. Local emergency responders are provided with access to the Local Emergency Planning Committee (LEPC) process and with individual plant emergency plans, maps, and other information via SARA Title III reporting.

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5. The N.J. Uniform Construction Code, which is locally administered with State oversight, covers all building construction or revision activities.
6. Most facilities have safety programs which are reviewed and approved by their risk insurance carriers and involve extensive interaction with their employees. Many companies involve workers in their safety programs in a variety of different ways.
7. Environmental and public health are passed and administered by local, county, regional, state and federal agencies.
   Resource Conservation and Recovery Act (RCRA) covers the management of hazardous waste from generation to disposal.
   DEP requires permitting of air and water discharges. Underground storage tanks are regulated and monitored. Workplace smoking restrictions are generated by the Department of Health. We have guidelines for asbestos removal, PCB inspections and special federal use requirements on the manufacture or use of vinyl chloride, etc.
8. Whistleblower legislation protects employees from retribution for reporting violations of laws. Employees are free to report any environmental problem to the proper authorities.
9. Unanticipated releases to the air or spills of chemicals must be reported promptly to the State (within 15 minutes for air).
10. Local fire departments conduct regular fire safety inspections to insure compliance with local fire codes.

We would like to know which level of government is not doing an adequate job? What programs are not working and why?

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Before taking legislative action that might diminish the effectiveness of existing programs, the Legislature should examine the existing regulatory framework to see how it can be improved.

LOCAL EMERGENCY PLANNING COMMITTEES.

Federal legislation authorizes state and local communities to become actively involved in the implementation of SARA Title III, also known as the "Emergency Planning and Community Right to Know Act of 1986." This federal law establishes requirements for federal, State and local governments and industry regarding emergency planning and community right to know reporting on hazardous and toxic chemicals. This federal law is aimed at helping communities to better meet their responsibilities in regard to potential chemical emergencies.

The (federal) Emergency Planning Act requires the Governor to create an emergency response commission. This has been done by executive order. This commission is required to authorize and certify local emergency planning committees. The State commission is responsible for supervising and coordinating the activities of the local emergency planning committees. As soon as a facility becomes subject to emergency planning requirements, the facility must designate a representative to participate in the planning process. The local committee must establish rules, give public notice of its activities, and establish procedures for handling public requests for information. The local committee has open public meetings.

The local committee's primary responsibility is to develop an emergency response plan and review it annually thereafter. In developing this plan, the

local committee evaluates available resources for preparing and responding to a potential chemical accident.

The federal law spells out what information a facility must provide a local emergency planning committee, the State emergency response commission, and the local fire department. The local committee or the State commission may request, and the facility must provide, the specific data requested.

Notwithstanding, the business community in no way objects to legislation that encourages a closer relationship between Local Emergency Planning Committees and a facility management. Business does recognize the concerns of some communities and their business neighbors. But this relationship should not be forced by a legislative program that encourages confrontation. As a general rule, confrontation defeats the objectives of programs such as H.E.L.P. We do object to legislation such as A-2832 and S-2058 that ignores SARA Title III guidelines before their effectiveness has been evaluated.

The H.E.L.P. bill expands the scope of the LEPC to include members with medical, industrial hygiene, safety and environmental experience or background. This bill overlooks the fact that these professionals are usually employed full time and that the legislation demands a substantial commitment of time from these professionals. The H.E.L.P. bill requires the LEPC to perform tasks that go beyond the federal mandate.

One of our biggest concerns is that the LEPC maintain its professional credibility. If it were to become a debating society or a platform for narrow

special interest groups, then its professional competence and ability to carry out its primary mission would be compromised.

The method for providing an adequate level of funding for the LEPC is a legitimate issue that must be addressed. We are willing to work with the bills' sponsors to examine methods of funding.

Many LEPC's have gained access to facilities in cases where they have indicated access is vital to assist them in developing a coordinated emergency response plan. We are not aware of a recognized LEPC being denied access to a facility. We urge you to keep in mind access has been achieved on a voluntary and cooperative basis. Unannounced demands for access will result in confrontation -- not because a facility is concealing its operations but because prior management plans have been interrupted. Such demands would most likely prevent an LEPC from achieving its objective.

On another aspect of this bill, we call your attention the fact that while small employers subject to SARA III do not have the resources of larger firms, they, nevertheless, operate in full compliance with minimum basic standards established by OSHA, the EPA, DEP, etc. These standards are regularly updated and Risk Insurance Carriers periodically monitor the operations of these small firms and require compliance with the basic standards as promulgated.

CONCERNS ABOUT QUALIFIED COMMUNITY ORGANIZATIONS

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Industrial safety experts are concerned that individuals who lack a background in safety will attempt to shape a company's safety and hazard prevention policy.

Under the provisions of this bill, the Qualified Community Organizations will be able to inspect facilities for sources of hazards and discuss remedies with management. This type of inspection is already mandated and conducted under the authority of OSHA. Therefore, this new legislation would be redundant. The QCO is, in fact, a new level of government. It would provide some individuals with an official government platform from which to harass industry and elected officials. These individuals are provided with this official status by a process of collecting signatures on a petition. Once in place, these "qualified" individuals can proceed without the accountability and responsibility that most elected or appointed governmental officials must have. You are providing a ready platform for individuals to run for local political office.

If you think we are blowing this out of proportion, we remind this committee of some recent debates where groups used tactics that ranged from the childish to the sinister. We have seen NIMBY (not in my back yard) groups attempt to win their point at any price.

The entire H.E.L.P. bill mandates many bureaucratic "musts" for local governments and businesses, but it establishes very few controls on the new "inspectors." You are providing uncontrolled access (including cameras and testing equipment) to anyone. Maintaining manufacturing competitiveness in the international marketplace involves numerous factors -- not the least

of which is the efficiency of process design and technology and product composition. Uncontrolled access will compromise the protection of our industry secrets. This will hurt all New Jersey residents.

INSPECTIONS

One of the goals of this legislation is to enhance communication between industry and the communities in which they reside. Additional people visiting a facility will not necessarily ensure better communication. This goal could be achieved by more efficient means.

This bill permits many people to have access to and the right to inspect New Jersey manufacturing facilities. A large group of people would be present for every environmental inspection conducted at the plant, and it would be able to hold meetings and write reports on the various aspects of environmental compliance.

Delegating enforcement authority to such large numbers of people would be similar allowing the general public to act as police officers. While the goal of this provision is to enhance enforcement, it is more likely to create an atmosphere of vigilantism. Moreover, it is difficult to escort such a large group through a manufacturing facility safely.

HAZARD PREVENTION COMMITTEE

The provision for a Hazard Prevention Committee might be a good method to encourage communication and interaction between management and union personnel at some facilities, but it is absurd to mandate this co-management for every facility in the State. This attempt to view the workplace as

a homogeneous constant is unrealistic. Overly simplistic suggestions such as this tend to ignore differences in organizational culture, location, personnel, product lines, and employer-employee relationships.

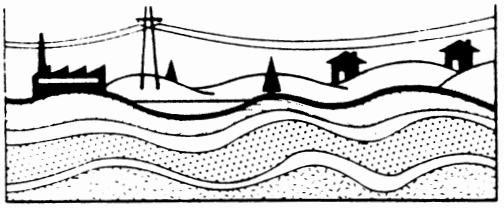
The vast majority of employers also recognize the value of a safety committee. In most facilities, safety committees make regular inspections and submit recommendations to abate an unsafe or hazardous condition. Where an employer fails to abate a condition, the members of the safety committee may report the condition to OSHA without fear of reprisal.

ARBITRATION

This bill specifies that a new arbitration board be established to address unresolved issues to the Hazard Prevention Committee. Labor relation arbitrators are already an established group and recognized as a binding authority in most labor disputes. Establishing an additional arbitration board to address safety disputes is redundant and a waste of State resources.

In conclusion, NJBIA urges that you oppose A-2832 and S-2058 in their present form. We are in the process of carefully reviewing these bills for the purpose of offering viable amendments that will permit LEPCs to achieve the objectives established by federal law.

187X



Hazard
Elimination through
Local
Participation

NJ Right to Know & Act Coalition
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Co-Chairs
▷ Jane Nogaki
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▷ Eric Scherzer
Oil Chemical & Atomic Workers Local 8-149

Steering Committee
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Communications Workers of America
▷ Ken Brown
NJ Environmental Federation
▷ Arnold Cohen
Ironbound Committee Against Toxic Wastes
▷ Rick Engler
Industrial Union Council, AFL-CIO
▷ Neal Gorfinkle
White Lung Association
▷ Mark Herzberg
NJ Environmental Lobby
▷ Bill Kane
United Auto Workers, Region 9
▷ Robin Mama
Philadelphia Area Project on Occupational Safety & Health
▷ Mary Ann Marian
NJ Citizen Action
▷ Peter Montague
Environmental Research Foundation
▷ Eileen Nic
Citizens Commission on Bhopal
▷ Ray Peterson
NJ State Federation of Teachers
▷ Ira Stern
International Ladies' Garment Workers Union
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▷ Ivey Williams
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David Tykulsker
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March 20, 1990

Spiros Caramalis
OLS Environment Section
State House Annex
Trenton, NJ 08625

Dear Spiros:

Please find enclosed a number of documents that we hope you will consider making a part of the official record concerning the Hazard Elimination through Local Participation Act. Please contact me if you have any questions about this submission. Thank you very much for your assistance.

Sincerely,

Rick Engler

Rick Engler
Coalition Board Member

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